

# Hindu Code Bill (Clause by Clause Discussion)

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**HINDU CODE—contd.**

**SECTION – A Continued---**

*The House re-assembled after Launch at Half Past Two of the Clock.*

[MR. DEPUTY-SPEAKER IN THE CHAIR]

**Shri Biswanath Das :** Sir, in the course of my speech this morning, I was speaking how, in democratic countries, when important, legislations and questions have to be taken up and are being placed on the statute book, the party foresees the legislation, .....

**Shri Ramraj Jajware (Bihar):** On a point of order. Sir. There is no Member on the Treasury Benches.

**Mr. Deputy-Speaker:** It is regrettable that there is nobody to represent Government. The Minister of Law has just come in.

**Shri Biswanath Das :**... places its programme before the country in the form of a manifesto, then on the basis of that manifesto, elections take place, and the party gets a vote in favour of the principles for which it stands. I claim that nothing of that kind is possible in an indirectly elected legislature as the present Parliament is. None-the-less, we have an electorate. That electorate is an enlightened electorate. Neither the Hon. the Law Minister nor his friends in this House or outside this House could say that the electorate to which we have the honour to belong is not enlightened. They are no other than the Members of the State legislatures. I claim that Government and the Law Minister should have taken necessary steps in this regard to consult the State Legislative Assemblies on this important legislation by requesting them to have their say in the matter, which would have given an opportunity to the country to speak itself. At the same time, it would have made the passage of this legislation easy and convenient: easy because with the command given by our electorate, it would not have been possible for the hon. Members of this House to oppose this legislation without resigning their seats ; convenient because no one would have had the audacity to say, " I differ from this legislation and yet I continue to be a Member of the House ". No one could have it both ways. No one could afford to be a Member of the House and refuse to carry out the mandate of the electorate. Therefore I claim that the Hon. the Law Minister as also Government have failed in this important respect, which was and is still open to them. I agree with the Hon. Law Minister, though differing from him that this legislation is urgent, and immediate to be passed in this Parliament.

By all means do not take recourse to a plebiscite; but the time is still there to make a reference to the State legislatures. After all, we are not going to pass this Bill in this Budget session. I may, in this connection, state that I for myself doubt the sincerity of Government regarding the need for passage of this Bill.

**Several Hon. Members:** No, no.

**Shri Biswanath Das :** My hon. friends who are anxious may say, no, no. I have a right to put forward my point of view in presenting my case before the Members of Parliament. If they were really anxious, it would not have come before this House for discussion for three days. What is the meaning behind it ? I must frankly confess that I am unable to understand how in a legislation of this nature, in respect of which there are wide differences among us and protests all over the country, the Law Minister or the Cabinet expects that these could be solved and the Bill could be placed on the statute book within three days as my hon. friend Mr. B. Das was claiming. I refuse to live in a fool's paradise. A legislation of this nature, unless it is to be pursued through a party mandate, has to continue from day to day and each person being allowed to have his say in the matter and try to place his points, if possible, for the acceptance of the House. Under these circumstances, I very much doubt the wisdom of the Hon. Law Minister in allotting three days, and that in this Budget session when you have not only to pass the Railway Budget, and the General Budget, but have also forty or fifty important Bills that are pending. Government say that they are hard-pressed for money. The newspapers announce that fresh taxation is awaited. I do not know how far that is correct. If there is any speck of truth in that, I have a right to ask the hon. Members on the Treasury Benches as to what they have done regarding the passage of the Estate Duty Bill which is hanging fire for the last one and a half years. I claim that first things should come first. What is the problem that you have solved up till now? You have solved no problem; but you have succeeded in creating problems. I believe, therefore, that Government, or at least the Law Minister is not anxious, nor is he very alert to see that this legislation is passed into law. If they were so, a special sitting that was promised by the Leader of the House should have been conveyed, or a special session could be convened to discuss the Bill thoroughly and pass it into law.

Sir, you will pardon me if I say that the Hon. Law Minister would not have dealt with the House in the way he is proposing to do, hurling insults upon individual Members of the House if it were not for the declaration of the hon. the Leader of the House that he stands or falls with this Code.

**Shri Syamnandan Sahaya :** Forget that. That is not the position now.

**Shri Biswanath Das:** I am not speaking to the Members : I am speaking to you. Sir. I will be happy if the Members will leave me alone, though I very much like and appreciate their help.

Therefore, I claim that the Hon. Law Minister has not .been fair to the hon.

Members of this House.

Then, I come to the second assertion that he made and that is the declaration that there is lack of common-sense in those who demand a common code for India. Why ? I should have been glad to be favoured with reasons for an insult which I claim is not merited. He said not only that but he proceeded further and said that he could present a Civil Code in two days.

**Dr. Ambedkar:** Yes.

**Shri Biswanath Das :** Then by all means, let him do so. We have been waiting for it for the last so many months. If it is possible to let us have a common Civil Code in two days, by all means let us have it. Let him then favour us with it.

**Dr. Ambedkar:** That will do, Mr. Das. You will exhaust yourselves. Conserve your energy. You are not in best of health, I find.

**Shri Biswanath Das:** I take note of the advice tendered by my hon. friend.

I do confess that the caste system will do no good to India, that the sooner it goes the better. I cannot think of a society living on the *Bhat Handi* system, on a system which says that if anyone touches my pot of *Bhat* or cooked rice, or my roti, caste is violated, because he does not belong to my caste. That is harmful. Let us do away with that system. The sooner we do that the better. At the same time, do I not realise that my ancestors, my forefathers have founded a system much nobler and much higher than the *Bhat Handi* system?

*Chaturvarnya maya srushta gunakarma swabhavashah :*

I created the four Varnas (i.e., fourfold castes) according to the *Gunas* (i.e., qualities), *Karmas* (i.e., action) and the *svabhavas* (i.e., natures)

Have the frame-work on the lines laid down in the Gita—that will be acceptable to all. Instead, what does my hon. friend do ? Instead of taking me upwards he takes me downwards. I could agree to go with him upwards, but.....

**Shri J. R. Kapoor:** To heaven and not to hell.

**Shri Biswanath Das:** To heaven or mid-heaven, but I refuse to go with him downwards.

**Dr. Ambedkar:** You do not know how to choose your friends.

**Shri Biswanath Das:** I am glad I have committed that blunder. Well, a common Code is not unknown. In Portuguese India you have it to-day. There are Hindus living in Portuguese India. Why not have it in India which is far more advanced than Portuguese India ? And if it is so easy to have a common Civil Code as my hon. friend says it is, let him come forward with it, and he will find at least some of those who are now against him will be with him. But, in respect of this Hindu Code, we cannot and we will never agree to go along with him. You cannot touch Muslim society, because then it will be the cry of religion being in danger. You cannot touch Christian society, then

also it will be a question of religion being in danger. But you can kick Hindu society and have your new experiments propagated in that society with ruthless uniformity. We cannot agree. Being a man of sixty, I cannot agree with my hon. friend in his constitution of a society based on rationalism. In our country there had been eternal strife between spiritualism and rationality, and in that fight it is spiritualism that has come out and rationalism has gone down, and the rationalists were branded *Nastikas* and the spiritualists as *Astikas*. I refuse to be *Nastik*. The form of society that the Hon. Minister proposes through his Hindu Code is nothing short of a society for which agitation was carried on in India in days of yore, and the country as a whole rejected it and the country today I make bold to say, will reject and is bound to reject it. If my hon. friend refuses to leave it for option, it is because of his apprehension that society will not go with him. If he is afraid of a plebiscite it is because of his apprehension that he cannot carry the country with him. If he is afraid of any other legislature but a packed Parliament in an indirectly elected legislature, it is because of his apprehension that so bitter a pill as this cannot be swallowed by any other. It is these apprehensions that make the hon. Minister and those of his way of thinking to rush the measure through this Legislature. Because my leader the Hon. the Prime Minister stated that he stands or falls by this Code, and though that statement was made without the concurrence of the party, we have to stand by him. And we do stand by him, and I appeal to him and I do so through the Hon. Minister of Law .....

**Dr. Ambedkar:** A bad medium.

**Shri Syamnandan Sahaya:** But that is the only medium left.

**Shri Biswanath Das :** If it is a bad medium, I leave it and I would appeal to you. Sir, for that is the only medium left to me now. Mr.

**Deputy-Speaker:** This medium is colourless.

**Shri Biswanath Das:** I appeal to him to eliminate the most controversial items in the Code so that there may be an easy passage. I have already stated, and I repeat it, that we cannot agree to this Code, and so far as I am concerned, even on my death-bed I will record my protest and say " no " to any attempt to constitute Hindu society on a rationalistic basis, as is being proposed in this Bill.

My hon. friend said that he was only making the legislation easy. As a student I knew, and most of my friends here also know that we were accustomed to read not text-books but " made easies ". Some of the professors of the Calcutta university used to make a lot of money by bringing out such " made easies " editions. And I know the terrible trouble that the students had to take because of this. Hon. Members will find reference in the Calcutta University Commission's Report— I think it is the Sadler Commission's Report—to the system of cramming. It is called the " crammig system " and I refuse to follow that cramming system in Hindu Code ; and I implore my hon. friend not to think of constituting any society—leave alone

Hindu society— on the basis of—1 have no other expression by which to call it— of cramming.

To give an illustration from ordinary life there are among *Vaidyas* both learned and quacks. The learned *vaidya* never takes to *rasa* or *pashan*: they dread them. But a quack throws open his *batua* and immediately treats you with *rasa* and, *pashan*, such as mercury and arsenic. I refuse to have this arsenic treatment from my hon. friend and I would beg of him not to apply the treatment to a society which has lived thousands of years with harmony. Looking at the history of the world you will see that the Hindu family or the Hindu home is the only happy home you find. There may be difficulties in some cases, they are bound to arise in a society of 30 crores of people. But the fact remains that you do not have here the horrible and tragic incidents that mar the social life of the West. I do not say that our society does not want changes, it does. Have changes by revolution or evolution as you like but let proper consideration be given to them before you launch on a legislation of this character.

While talking of marriage under this Code, my hon. friend from Bihar, who is a jurist of eminence, stated that in marriage, the husband and wife are partners. I join issue with him on that. The Bill does not make them partners. If they were partners I would have little difficulty in accepting it. But the Law Minister is bringing contractual relations, thereby doing away with the sanctity of marriages enjoined by *samskara*. He is introducing contractual relationship of the Western type into our society and enforcing it in all its rigidity by means of registration. Are you going to have legislation for 'haves' or 'have nots'? If you want to have legislation for 'haves' by all means have it with all your pleaders, vakils *advocates*, etc.....

**Shri Syamnandan Sahaya** : 'haves' do you mean those who have wives ?

**Shri Biswanath Das** : I am not concerned with them. You go to the mofussil. India lives in its villages and Indian life is village life. Barring the few upper class people, the rest of the people celebrate their marriages for ten, 15 or even less in some cases. You are now going to have registration departments with all their formalities, making it more expensive.

I want to know from my hon. friend whether he has calculated what the expense under this head is going to be to the State. I record my strongest caveat in this regard against the Bills that have been thrust upon this House without any calculation of the expenditure that a Bill entails on State Treasury in its operation. I was a member of the old legislative council and I know that under the Devolution Rules it was a part of the business of the then irresponsible Government to calculate the financial implications of each Bill. I have a claim to ask my hon. friend to give us the financial implications of a Bill of this important nature and the expenditure it will involve on the State treasury.

[MR. SPEAKER IN THE CHAIR]

You are going to have your cases mostly decided by the district court, which means a higher court than the Munsiff's court. As a member I am being called upon to give my assent to this Bill. I have a right to know what is the money that I have to spend under each of the items. You are going to open registration department. You are going to have special marriage courts. I have a right to know what you are spending now and what you propose to spend hereafter. It seems to me that the expense that the State would have to incur under this head would be unimaginable. Think of a population of 33 crores. You can laugh.....

**Mr. Speaker:** The hon. Member may address the Chair.

**Shri Biswanath Das :** I am sorry. Sir. The Hon. Law Minister may laugh or others may laugh. I do not worry. But I claim that Government have the responsibility to place a working sheet before the House to show what they would have to spend to give effect to the various provisions of the Bill as used to be done by former Governments. Taking one per cent of the total population as people resorting to courts your country will be flooded with courts and registration departments.

**Mr. Speaker :** May I point out that we are at present discussing clause 2 of the Bill which refers to the application of the Code. The point that the hon. Member seems to make relates to the cost to be incurred in the administration of the provisions of the Code. Could that not more appropriately be taken up when we consider the question of marriages ? In the clause where it is provided that marriages shall be registered this question will arise. This is not the stage of a general discussion of the entire Bill. We are at present at the clause by clause stage. Therefore, instead of interfering with the hon. Member's speech now and then, I would request him to reserve his remarks till we come to the clause which provides for compulsory registration of marriages. .

**Shri Biswanath Das :** Sir, I thank you for the guidance you have given me, which I bear in mind. But I have also to make my submission in this regard. There are amendments to clause 2 to the effect that State legislatures may be given the option to give effect to the provisions of the Bill after it is passed into law. Therefore I submit the question of finance comes in prominently in various States. You have been good enough to refer to marriage. But it is not about marriage that you have to spend money...

3 p.m.

**Mr. Speaker:** I referred to marriage because the hon. Member was referring to it. It was only by way of illustration that

I referred to it. The State Governments would be required to give effect only in case the amendment is carried. But assuming that that amendment is

accepted, still effect will be given only to such provisions as are ultimately accepted by the House. So when we come to any provision, which involves expenditure, then it will be competent for the hon. member to advance that argument—not at this stage. That is what I was pointing out.

**Shri Biswanath Das** : Thank you very much. Sir. I would not go further into it.

**Shri Syamnandan Sahaya** : May I make a submission. Sir, in this connection? Under our new rules every legislation which involves any expenditure has to be presented to this House accompanied by an estimate of such expenditure. Therefore, perhaps my hon. friend was referring to those rules.....

**Mr. Speaker**: There is nothing to be further discussed about it. It does not affect the point of relevancy. But I believe this Bill was introduced long before rule came into force.

**Dr. Ambedkar** : Yes, Sir. And I can tell my friend that this Bill is going to be a revenue-paying measure.

**Mr. Speaker** : That is another matter. We are not concerned with it.

**Shri Biswanath Das**: My hon. friend says that this will be a revenue-paying measure.....

**Mr. Speaker**: We need not go into that now.

**Shri Biswanath Das** : Well my hon. friend claims the passage of this Bill and especially of this clause on the score that this is progressive. If it is so, I have no objection. If he convinces me that the legislation that he has adumbrated is progressive, I will certainly go with him. But I feel that it is as reactionary in certain respects as anyone could think of. I would in this connection invite my hon. friend's attention to the Child Marriage Restrained Act, an Act which has been in existence for the last twenty years or more and is a dead letter.

**Several Hon. Members**: No, no.

**Mr. Speaker**: Let him proceed. That is his opinion.

**Dr. Ambedkar**: His wrong opinion.

**Shri Biswanath Das** : I will be glad if it is really " no " but my experience is otherwise. But what has my hon. friend the Law Minister done ? Whether the Child Marriage Restraint Act is dead or is alive, what has my hon. friend done with his show of progressiveness ? He has kept up and carried on the same age of marriage of 18. Why should you have the age of 18? I cannot see why he is so much enamoured of this 18. A boy to be put to married life and conjugal bliss in his eighteenth year is a thing unimaginable. I cannot think of it. I would appeal to him to consult his advisers of public health and ask whether such a course is desirable. Extend it to twenty or twenty-one years. If you really claim to be progressive, extend it. If you want to restrict, let the restriction be on justifiable grounds which will be for the well-being of the greatest number. That is why I claim that in certain respects the Bill is not at

all progressive. In fact in ordinary instance you will not find people taking to married life at eighteen. Very few people do it. Therefore, the age limits of 18 and 16 that you have fixed in the Bill to me look retrograde from the national point of view. (*Interruption*).

**Mr. Speaker :** I must be very clear on this point that interruptions not only prolong the speeches but they add to the irrelevancies of the debate. I was again going to remind the hon. Member who is on his legs that he is going into questions which do not form the subject-matter of clause 2 or any of the amendments. He is now going into the age of marriage as if this is a general discussion on the Bill. I do not propose to allow any irrelevant discussion. We are taking the Bill clause by clause now; let us be strictly within the relevant scope of the clause. Otherwise we will never see the end of this legislation. I am not keen that it should be passed—it may be passed, it may not be passed—but at any rate I am keen to see that the debate on the clauses proceeds within the limits of relevancy and we go clause by clause to the end of the consideration. That is my point. I am not concerned one way or another. Therefore, the hon. Member will confine his remarks strictly to the provisions of clause 2 and the amendments thereto.

**Shri Biswanath Das:** Sir, I am very thankful to you but my reference was necessitated by the fact that my Hon. Friend the Law Minister claimed in the course of his speech that his legislation is a progressive one. Therefore, I was forced to say that it is not.

I have stated that the Code is intended for the "have-nots" and I have explained it. My objection to the clause is that the proviso to clause 2 is unnecessary and redundant. Unnecessary because it creates new complications and redundant because if anything is added without real necessity to the structure of the clause it creates further complications. Therefore, in any legislation such a redundancy is always given up.

I fail to see why sub-clause (4) is being renamed. I don't mind the daughter having more than the son or the son getting more than the daughter. Let it be a matter between the daughter and the son. I for myself would not hesitate to accept Marumakkattayam law instead of accepting division of the family property into bits. That being so, if my hon. friend would propose to give all the property to the daughter I would not object. Let the women have it. In fact, in Malabar, the women are by inheritance having almost all the property. Therefore, you may do that or you can give the daughters and the sons equal rights: this is not a matter with which I am very much concerned. Speaking for myself. I have no daughter to claim any share from me, but I feel for the daughters in general. Now, if you add to the share that the daughter gets from her father's house by sub-clause (4), it means that you add to the financial possibilities of the women. She gets her *stridhan*, her share of the property and also special facilities as provided in the Special Marriages Act of 1872. Therefore, the continuance of sub-clause (4) is, I think, unnecessary also, I

believe, unwarranted.

I feel that the time has come when something has to be done to change the social structures of India. That some has to be done with the concurrence of the people and the thinking sections of the society. Therefore, I appeal to the Treasury Benches and to you to see that Government remove the objectionable features of clause 2 as also of the Bill, so that the Bill will have a smooth passage.

**Shri M. A. Ayyangar:** At no stage of the Bill hitherto have I had the good fortune to take part in the debate. You, Sir, were absent in the earlier stages and I had to take the chair. I have always tried to keep my opinions to myself, but the time has come when I should express my opinion regarding this matter. Let me first of all declare to the House and to the hon. the sponsor of this Bill that I am not wedded to whatever is ancient merely because it is ancient nor opposed to whatever is new simply because it is new. Merely because something is old, let us not cling to it ; nor decry something that is new because it is new. It is up to us, as wise men, to consider both the pros and cons and accept what is good and reject what is bad. I shall try therefore quite dispassionately to go through some of the points that have been urged. I shall not go over the ground and make this a speech on the second reading of the Bill, but whatever is relevant in general I shall address myself to.

I shall, first of all, try to dispose of some of the amendments that have been placed before the House and the objections that have been raised in regard to them by the sponsor of this Bill. It is said in one of the amendments that because this bill has far reaching consequences it must be only an enabling measure, it is said that option should be given to any individual to declare that he will be governed by the provisions of this Bill from the date of registration or declaration to this effect. The Hon. the Law Minister said that down from the earliest times when legislation was embarked upon in this country by the Britishers, there has been no precedent whatever for a measure being passed and option being given to any individual or class to accept or reject that measure by declaration. I am afraid his memory is too short. Now, let us take the Cutchi Memons Act of 1920. Indians who got converted to Islam were very often governed by the Hindu law, the law in which they were born. So the Cutchi memons had the joint family law and they also made adoptions among themselves. But later on it was urged by some reformers that the Shariat, i.e. the law of Islam, should apply to all persons embracing Islam. Islam has its own code of laws regulating inheritance, marriage, succession, divorce etc. The Hindu faith has attached to it its own law made by the *smrithikaras* relating to the same items which are also regulated by the Islamic law. For those persons who got converted to Islam, an enabling provision was made in this Act whereby any Cutchi Memon who wanted to adopt the Hindu law could by declaration before a prescribed authority do so; he could either ask to be governed by the Hindu law or by the customary law

which prevailed before his conversion.

**Shri Raj Bahadur:** That was a very special case.

**Shri M. A. Ayyangar:** I would refer to a general case also. My friend should be a little patient. Under the Cutchi Memons Act, as amended in 1923, there are the following provisions:— " Any person who satisfies the prescribed authority—

(a) that he is a Cutchi Memon and is the person whom he represents himself to be;

(b) that he is competent to contract within the meaning of section II of the Indian Contract Act, 1872; and

(c) that he is resident in British India may be declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act, and thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law."

Now, the argument of my hon. friend Shri Raj Bahadur cuts his own case, because this was not a law intended for the whole of India but was a law specially to safeguard the interests of a particular community. This section is an enabling provision. Cutchi Memons are not the only Musalmans in this country. The majority of Musalmans far outweigh the Cutchi Memons. When 99.9 recurring per cent. of Muslims follow the Shariat, why should a special provision be made for the Cutchi Memons? Therefore, this interjection from my hon. friend, far from helping him, helps the other side. Even if there is one instance, it is enough. Now, is it possible for you to enforce Buddhism on me or for me to impose Hinduism on another man? This law of inheritance, marriage, succession etc. is based upon the same tenets. But if a person who got himself converted wanted to be governed by the ancient law which prevailed before his conversion, he was given an option to change over to the other law. Though he got himself converted, he had to convert himself voluntarily to the new legal institutions, changing one from the other. There was no coercion whatever. But without the suggested amendment, this Bill will be a piece of legislation which is of a coercive nature, bringing various other persons into its fold. So far as Hindus are concerned, if you want to marry out of the ancient law, there is the Civil Marriage Act. It was originally intended to apply to persons who had to declare that they were neither Hindus nor Christians nor Jains nor Parsis. Later on, it was changed. No two Christians could marry unless they disavow their religion. No two Muslims could marry unless they disavow their religion under the Civil Marriage Act. But we are always progressive. We are self-denying. We are all-embracing even to the point of self-destruction. We have amended this Act by saying that Hindus need not disavow their religion. Hindus, however they are married, may adopt the Civil Marriage Act. That is what we have done. What more is necessary ? Now you want to convert those people who follow the

ancient law at the point of the bayonet to your way of thinking. Why do you want me to change my religion? I have already quoted an instance where a special piece of legislation was made for the Cutchi Memons, a microscopic minority. It is because Dr. Ambedkar feels that a majority of us are archaic—to use the mildest word—that he has brought forward this piece of legislation. It won't be wrong for me to say that he is still finding it difficult at the age of sixty to know to what faith he has to belong. But he is asking me to decide overnight that I should change. If I may raise my voice—let me not be misunderstood—I am as fit to be in the society as other members can claim to be. I am not ashamed of my religion. I am speaking not only to the men and women in this country but also to the outside world, that we have everything to be proud of the tenets by which we are governed and proud of the law that our ancients gave us. If only the other nations of the world followed our religion and the principles we have adumbrated there, there won't be these constant wars and all would be peace and peaceful. We are always accustomed to adopt things which are found wanting in the western countries. A motor car which has been discarded in Europe becomes a model of a car here; an institution which has been discarded in the west becomes a model in our country.

In 1937 we passed a law in this House that in the case of converts to Islam, their customary law according to Hindu system would prevail in regard to adoption etc. Similarly, in the South the Moplahs of Malabar had adopted certain of the Hindu customs, though they were Muslims. It is not even a question of adoption : they were born with such customs. Therefore, they followed one rule so far as their inheritance and succession was concerned and another rule so far as their faith was concerned. We passed in 1937 what was known as the Shariat Law. This is for all India and all Muslims. Section 3 of the Shariat Act says :

(1) any person who satisfies the prescribed authority—(a) that he is a Muslim, (b) that he is competent to contract within the meaning of section II of the Indian Contract Act (IX of 1872), (c) that he is a resident of British India—may by declaration in prescribed form and filed before prescribed authority declare that he desires to obtain benefit of this Act and thereafter provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to matters enumerated therein, adoption, wills and legacies were also specified.

Therefore, there is absolutely nothing novel in my hon. friend Shri Jaspat Roy's amendment. This is a measure which ought to be accepted cautiously. A majority of the community do not want this, and not only do they not want it, but also they are able to take care of themselves. Is this House particularly under the leadership of my hon. friend, entitled to tell and advise people outside that what they are following is wrong and that they should change their method ? I am not basing my argument on the ground that this

Parliament is not entitled to do that, though my personal view is that this Parliament cannot enact legislation in the way it was doing during the British days. We are now guided by a written Constitution. My own personal impression is that the personal matters of an individual, and the practice by which he is governed so far as his marital relationship is concerned are governed by his fundamental rights and should not be touched by (anybody). So long as the practice which I follow and the procedure I adopt in regard to marriage is not opposed to public morality and is not obnoxious, or indecent, it is my own business and nobody has any right to interfere with it. Therefore, we have to go slow in this matter.

So far as the progressive elements are concerned, we have made a number of enactments now. The Hindu Widow Remarriage Acts are there. My hon. friend referred to the Child Marriage Restraint Act. True, it has put down child marriages. But it has put down marriages also. Everywhere a new problem has arisen :there are armies of unmarried girls today, there will be no dearth of girls if only you want to enlist them in the army as nurses or doctors. This is a new problem that you have created—have you heard of it before ? Our friends, including Pandit Thakur Das Bhargava, cried hoarse, that by early marriage girls became widows. But is there any guarantee that a man will continue to live, the moment he marries a girl of fifteen. I do not think God in his wisdom has arranged that a man marrying a girl of fifteen will live long, and that a man marrying a girl less than fifteen would die early. Therefore nobody can stand guarantee on this matter. It is a question of balancing the convenience.

We have not heard of any marriage except in the human kingdom. Animals don't marry ; there is no law of divorce among them; they don't have family life. It is only with respect to human beings that the institution of marriage is prescribed as one of the *purusharthas* with a view to avoid inconvenience. As the Maharshi said, of the four *purusharthas*, the three, that is *Moksha*, the other word dharma, maintenance of society, and artha, politics or economics, depend upon a happy family life. This is one thing on which all our ancients laid emphasis, whereas in the Western society individualism has been all along in *excelsis*. Here family is the unit of our society. I do not mean to say that any human institution is so perfect as to obviate any inconvenience. So far as our marriage laws are concerned) no woman remains unmarried unless she chooses to remain a *sanyasin*. A Sanskrit *sloka* says that no woman is entitled to freedom. But it has been misunderstood. A woman is not born twenty-five years old. She is born out of a mother's womb, has to become an adult, marry and become old also. Both of them, whether a man or a woman, when they are in their teens are minors, have to be under the guiding hand of some other person. So long as the girl remains a minor the father has to maintain her. When she becomes old, is there any better person to look after her than her son? Therefore at the dawn of life as well as at the close of life

both man and woman depend upon the father or the son respectively. The only question is during converture. If God has created both man and woman, either the woman should go and live with the man or the man has to go and live with the woman. In a happy marriage the woman must live with the husband or the man must live with the wife. Is there a middle course ? I ask Dr. Ambedkar ( *An hon. Member*: they live together). Yes, both of them live together. That is what I am saying. Therefore either the man's voice dominates in the House, or the woman's. Let us assume there is a difference. If the man's voice prevails there is no trouble. Or the man must get himself submerged in which case also there is no trouble. But if there is a difference between the man and the wife as to whom the girl should be given, when is the marriage to be celebrated ? I am only thinking aloud of the inconveniences. It is not as if man produces sons and woman produces daughters. In all seriousness I am addressing this House. What I am submitting to the House is this. Some people have misunderstood, merely because some of our sisters are going about with regard to their share and their sufferings—on account of the experiences that they possibly have had—and the corresponding chillness on the part of our friends here, that it is a woman's Code. It is something like a husband and wife quarrelling " to whom does this child belong ? " It is not either to the one or to the other. Therefore, If this Code emerges, it will belong both to the men and women of this country. Let us therefore look at it dispassionately.

We have been brought up for three thousand years in a particular institution. I will presently quote a number of jurists who came from the West and who were attracted by the institutions that prevailed here. Some of them even become converts and Max Muller created an *ashram* also. You have their opinions. They have compared their own institution with that which was prevailing in this country. They wanted to be converted but for their social habits and customs which weighed strongly with them. As they got enamoured of our institutions we are also now getting enamoured of their ways.

Let us examine whether it is useful or not. Let us see what the authors, the Members of the Hindu Law Committee said. Mr. Rau himself said that this is a concurrent subject and as regards such of the chapters the Provinces may be left some voice as to whether this portion should be applied to this community or not. The territory to which it should be applied, whether it should be enacted at the present time or should be postponed—all these are matters which any reformer, the sponsor of the Bill including, ought to take into consideration, so that there may be no impression let in the mind of any person that his conscience or religious faith or scruples have been trodden over. We have to gradually take people along. It is not as if we are declaring a war on Hindu religion. It is not an immediate question like deciding whether we should join America or not in declaring China as an aggressor. Here and

there an inconvenience might have been felt by some people. I am asking this House, though you, Sir, to see the balance of convenience. It is not as if any human institution is perfect.

Without going into details, taking the question of marriage, it is a proved fact that till the Sarda Act came into being, the majority of our women—99 per cent of them—were married. Do you want to say, let women remain unmarried, let men remain unmarried, let there be children who have no parents—like forty thousand war babies to be taken care of by others? Is it right for you to do so in our country? You will be creating a new problem. Is it right? So far either the man had to obey the voice of the woman or the woman had to subordinate her voice. Otherwise where is the house and the household? That is exactly why the woman is not under the law. The modern woman who is educated in a foreign system, who has lost moorings in her own faith, wants that she should inherit the property of her father and not her husband. She is indifferent. She wants to have the money in her pocket and feel "Why should I be subordinate to a man?" I know the difficulty in every household but if I am saying these things I am saying so with experience. Girls refuse to marry now because they feel "Why should I subordinate myself to a man? Give me a portion of the property". Does my daughter expect me to live perpetually? It is not money alone that makes for happiness.

Suppose there is a rich man and his daughter inherits his property. When she is married does it prevent the other man to belabour her and to beat her? What prevents him from doing that? Many people speak supporting this Code. I am not referring to Members of Parliament—they know everything. I am only suggesting what many people outside are saying. Today under the Hindu Law the girl is not absolutely taboo. If a man dies leaving no children behind, the widow inherits the entire property. Apart from Deshmukh's Act, under the ancient Hindu Law she is the heir of all the property of the husband in cases where there are no children. Secondly, if there is a daughter and the mother predeceases the father and there are no other children, she becomes the heir to the entire property. There is absolutely no difficulty. What is sought to be done here is that simultaneously with the son the girl also must have a share. The responsibility of maintaining the household is that of the boy. We are not rich millionaires. The *zamindars* have also been liquidated. *Rajahs* have gone. Only the middle class people are there. I am addressing myself only to them. There are the poorest people where both the husband and wife eke out their living by working as coolies. And what happens to the majority of middle class people? The husband may be working as a clerk getting Rs. 100 or Rs. 200 a month. He educates his boy and expects that when he comes of the age of 21 or 25 he would take charge of the family at a time when he is himself fifty or fifty-five. When he retires there are a number of children to be taken care of. The property that he has accumulated is so small. I know in my

part of the country persons who have any holdings over five crores are only ten or five per cent. of the entire persons holding land. Land is the wealth in our country. There may be a few industrialists in Bombay and a few in Ahmedabad. But generally people have neither industry nor land. The only industry for a middle class man is to become a clerk and earn some money, and by the sweat of his labour he earns it. The responsibility of looking after the family is thrown upon that boy. He may get a small land or a thatched house as patrimony. The society expects him to take charge of his younger brothers and sisters and also to maintain the old parents. When the Britishers were ruling us the officials in the Railway Department, stationmasters and others, used to get passes sometimes in the year to go round. The pass is for the family. I am sorry to note that the same practice is still continuing as regards the description of the family, namely that the family means himself, his wife and children. What about the old parents ? This may be in consonance with the western system where as soon as the boy comes of age he marries and goes away. The girl also marries and goes away. The old people have to be looking at each other's face ! Do we want that kind of animal life in our country ? I have no quarrel with the rest. It is a misfortune that the individualism is in *exce/sis*. The husband and the wife are one unit and they ought to protect the old people. Our joint family system was brought about by our ancients many years ago and that is a natural unit and there the father, mother, the son and grandson all of them go together. I say that this is a happy unit where unemployment never existed. People who talk of socialism and communism pay lip sympathy and I say that this tendency is the germ of Socialism. The husband in a particular family works for the maintenance of his own children on the one side and for the maintenance of the older people on the other side.

In Madras after this marriage-divorce law was passed 38 applications were filed, (*interruption*) Boys alone can marry and no girl can marry a boy. Out of these 38 applications for divorce, 30 applications were filed only by the husbands.

**The Deputy Minister of Food and Agriculture (Shri Tirumala Rao):** Are they from the middle-class ?

**Shri M. A. Ayyangar :** Most of them were from middle-classes, most of them were educated men, unfortunately in western style. As I said, the majority of the petitions were from husbands. I think there was only one case where a woman was said to be sterile. I would bring that under this Code. One other case was the husband, an educated lawyer and he is employed in Bombay. He gets Rs. 100 as salary. The girl is employed somewhere as a Doctor getting Rs. 400. The girl wants the husband and the husband wants the wife. The only pull was that the wife wants the husband to come and live with her and the husband wants the wife to come and live with him. After marriage this trouble has been going on between the husband and wife for

three years. The husband said: " How long am I to be without her company " and the Court found that it was a case of desertion by the girl and they dissolved this marriage. I ask all my sisters here present and others outside, in a widow re-marriage after the husband's death nobody knows whether the man has not touched the woman before her re-marriage. Even after this the widow-re-marriage has not progressed considerably, (*interruption*). My friend says that what I say is a lecture. What my friend says is all truth. The Widow re-marriage Act was passed long ago but still it requires a lot of persuasion.

There was an hon. Member of the Assembly—he was a Member from Bengal—and he brought a single clause Bill which stated that no widower shall marry a spinster. His idea was that a widower may marry at least some widows and when some of our friends pooh-poohed the idea, he withdrew the Bill and said that he committed a mistake. When once a man has learnt that a woman has been divorced, would that woman be touched as a wife and married again as a wife ? I do not want the society to be disrupted in that manner to suit the few conveniences here and there of some individuals. There are difficulties but the other difficulty is far more appalling than this difficulty.

I was told this morning that some delegation is coming from Pakistan for the purpose of recovering abducted women. Have you ever heard of an ' abducted man ' ? Nature has so made us that without the husband and the wife, there is no unity in this world. Even among the Patagonians the wife is as tall as the husband. In any other community the male is taller than the woman. Is it good if I talk like a woman with a squealish voice and a woman goes on talking like a man? Therefore I must be a man and a woman must be a woman. I see I am evoking laughter of my friends but I feel that God has made the best arrangement by creating a happy family in which the parents will be protected; the minor children will be protected. The affection is not as a result of wealth. Love and affection must flow of its own and it does not depend upon money at all. Most of us are poor and we marry and get a son and in our old age he takes charge of the management of the household and we feel that since we have discharged the responsibility to the aged parents, similarly he will maintain us in our old age. Sanction has the mighty force. That old law has much greater sanction than any other law, which has prevailed so far for the last 3,000 years.

When I become a member of parliament you do not allow me to sit here unless I take the oath of allegiance, but so far as this marriage is concerned, I ask you all, are you to displace these old customs such as taking hold of a woman, taking her hand and placing her feet upon straw and saying that " our hearts are placed together like the Ganges and Jamuna " ? This is not such a drab affair. Is it for the purpose of conjugal facility that a man is marrying and a woman is marrying? Our ancient scriptures enjoined it for the purpose of a happy married life and for the purpose of a good progeny. It is not open to me

to leave a legacy of blind, lame and dumb children to the rest of the community and ask them to take charge of them. Even among race-horses we talk of pedigree and for humanity alone any man can marry any woman and still expect the children to be perfect angles. The new marriage that is proposed will be like tying a race-horse to a lame donkey.

Jayaswal an able commentator of Hindu Law said that our ancients had big herds of cattle and they were also anxious to have first-class progeny so that they may take charge of the rest of the community. That is an honoured practice of our country. Hitler also wanted a good progeny for his country. Even Mussolini got a number of marriages celebrated in his country.

We say in our *Sastras* : " *Aputrasya gathirnashti* " ; " *Punnamno Narakadyasinath thrayathe pithatrain suthah* ". That is, the son saves the father from the *Naraka* called *path*. It is that sanction that has produced a lot of children in our country. Otherwise, we would have had to give a hundred pounds to every mother to get children. Are we to pooh-pooh this culture ? What makes me say all this is that it is unfortunate that the Chairman of the Rau Committee is a gentleman who did not marry according to the Hindu law. Many of the Members of the Select Committee were not married according to the Hindu Law; some were bachelors who did not marry at all.

**Shri Kesava Rao** (Madras) : Who says that they were not married ?

**Mr. Speaker** : Order, order. I think we are having this discussion a little beyond scope.

**Shri M. A. Ayyangar** : I will come within the scope of the Bill.

Mr. Speaker: He has already taken more than 35 minutes ; I am afraid it is rather too long. He may be short and to the point.

Shri M. A. Ayyangar: I am only referring.....

**Shri Thirumala Rao**: The reference is too personal with regard to the personnel of the Committee.

**Shri M. A. Ayyangar**: After all, let it not be said outside that that is quality opinion; it is only a question of personal opinion. I am as much aggrieved about this. Am I to bow down when it is said of the *Smritikartas that they had absolutely no business to go on changing the smritis* ? What else are we doing ? We are passing a law in the morning; we are amending it in the afternoon. The *smritikartas* wanted to change the *smritis* according to the changed circumstances. They are tabooed as archaic persons. If they have changed, they are equally condemned for having changed. Why are there so many *smritis* ? Each is addressed to particular branch of law. My point is this. The reverence that is due in a change of law of this magnitude is not there. We are looking at the question from a different point of view. I submit that by means of this legislation Hindu society is cut vertically, horizontally, diagonally, into bits and bits. You say, let a man say, " I do not belong to Hinduism ". Even the wording " professing the Hindu religion " is obnoxious. Why do you call yourself a Hindu ? What is there in Hinduism ? There are

certain things ; there is the doctrine of *Karma* which even the Buddha and the Jaina believed. The *Vedas* are not peculiar to me. I believe in the hoary antiquity of the *Vedas* as an inspired document. Do not the Muslims believe that there is a *Veda*. Even the Sikhs who belong to a reformist religion, worship a Book. Why should I be ashamed of my *Vedas* and of calling myself a Hindu ? Whether I am a *Brahmo samajin*, or *arya Samajam* or a *Vaishnav*, if I do not believe in the *Vedas*, I am not a Hindu.

Unfortunately, in this country, religion has entered into politics also. It is said that on account of these vicissitudes of castes and creeds, so many Muslims became converts. I ask, was there not one religion in China, Buddhism; was there not one religion in Indonesia, Buddhism ? Where is Buddhism in Indonesia today: Where is Buddhism in Malaya? Were not a number of people converted to Islam in China ? Again and again, wherever there is any difficulty you attack Hinduism and say that it is this ancient system that is responsible for all this. I say, the remedy is elsewhere. Apart from its disadvantages, it is the Hindu system of marriage and not allowing a divorce, of property not being dissipated by division amongst daughters also, who have no responsibility to maintain the family, etc., that has been the source of strength to the people. I would ask a simple question. If the daughter gets married, do you ask me to live with my son or my son-in-law ? It is said : "*Jamatha dasamo grahah* ", the son-in-law is the tenth planet. I must be supported by somebody in my old age. Why not live with the son instead of the son-in-law ? What happens if you give a share to the daughter ? Of course, she will say, " Come and live with me ". But, my fate will be that of King Lear. I am appealing to all mothers and sisters to anxiously and seriously consider the situation. Let them not be under the impression that I have not consulted my partner at home. We have deliberated for a long time.

In these circumstances, I say, let us go slowly. Whoever wants to have liberal views, let him have his own way of life. Incidentally, I may say that *sati* is opposed to morality; that was rightly put down. You say this is an enabling provision. Why don't you say that a brother may marry a sister? That would also be an enabling provision. Up to certain limits we can go; beyond limits, we ought not to go. We should not allow incest. The question is whether the marriage should be beyond three degrees or seven degrees. I have also read some books on genetics. New things are being discovered. They say there are three kinds of blood and that one does not agree with another. I have also read astrology in the old school. They say that before marriage you must consult the *Rajju*, *Sarpa*, and *Gana* agreement. This *Gana* seems to have been discovered by the westerners. The late Dr. Rabindranath Tagore was a great poet ; but we recognised him as a great poet only after the westerners recognised him. Similarly we want somebody from the west to come and say that marriages should be only of a particular order and that the points in the old *smritis* are very good. I am a conservative in the sense that I do not want

to leap before. I know that the other ground is steady and strong I would only urge upon this House to stick on to whatever has endured you for such a long time.

4 P.M.

Before I finish, I would like to refer to one other aspect of the question, that is the *Marumakkattayam law*. They are all intellectuals; practically in the Secretariat, every Secretary is a Menon, coming from Malabar. I am proud of them. They have got a different way of life. Ask them if they are more happy. Why don't you impose this law on them also? Take the *Aliyasanthana Law*. You may think that it is opposed to all nature, where a man visits his wife and the wife remains in her house, where the children are maintained by the mother and her brother, not by himself. To you it may appear strange. Natural affection is different. Would I embrace my sister's sons with more affection, then my own ? Well that is their law and we are allowing them to continue under this law. But, when my hon. friend Pandit Thakur Das Bhargava says that there are certain customs in the Punjab, you say that they should be thrown overboard because my hon. friend is not so vociferous. After all, it is a wrong principle of jurisprudence. Law does not go in advance of custom. It is a human institution. It is something like saying that grammar does not go in advance of language. A child learns to speak first and then comes in grammar. It is a wrong principle of jurisprudence to say that custom is a wrong thing. It is said that a custom, to have the validity of a custom, must be ancient, must be moral, must be definite, etc. These are principles under which customs will be recognised in courts of law. I say it is wrong to say that, notwithstanding the validity of any established practice, we abrogate that because we have come to a different conclusion. What right have you to say so ? It is not that I am questioning the competence of this Parliament to go into this matter. I am only saying to my Hon. Friend, let him not force this law on the community. It may become a dead letter. Let the people come forward and ask for these reforms. I would like to have statistics as to how many persons have married under the Civil Marriages Act. We may call the people ignorant; after all, time will judge whether they are ignorant. Therefore, I would appeal to hon. Members not to jump before you are sure of the ground. Let us have piecemeal legislations. We had the Widow Re-marriage Act. We had the Act to give women the power to inherit property. We had the Act to restrain child marriages and so on. Therefore, I say, let us wait and see. Let us go slow. Nothing will be lost thereby. Nothing will be lost because we do not allow divorce. Allow it to those who want a divorce. Let those who have solemnised their marriages under the civil authority, to jointly make a declaration that they will be governed by the Civil Marriage Act. If there is a volume of opinion against a measure, let us try to change that volume of opinion. Let hon. Members consider the question coolly and deliberately. Let us not displace the existing system merely because something is novel or

strange so that you may go with the rest of the universe. We understand what is meant by Christianity. Germany is a Christian country, but were there no fightings in Germany ? Do not Christians fight with each other? How can we say that because of castes and creeds in our country the nation went down to the Greeks ? Why give a platform and a point to every other man to abuse us ? We have progressed, and progressed considerably. In Switzerland, they say no woman has a vote. Then why not our women go there and ask them to demand votes ? There is no use giving a lurid picture of our society and of our women. Our women have produced Sitas and Savitris. They followed their husbands. Perhaps we have now to follow our wives. Let them write our *Puranas* and say that men should follow their wives, if that would bring domestic peace. To-day we are husband and wife. To-morrow I go to a cinema and see a woman well made up with powdered face and all that. Am I to come home and beat my wife, just because she is not as pretty as the one I saw in the picture ? And the next day, am I to apply for a divorce? No. Woman is the weaker sex. Perhaps they may quarrel with me for saying so. But you cannot get rid of these institutions unless you pray to God to have only women in the world or only men. These institutions are very necessary. They are necessary for the proper balancing of domestic life. They are necessary in the interest of economy in the interest of solidarity and in the interest of avoiding unemployment and in so many other interests. If the husband dies, there is the brother-in-law to take care of the widow. We have also the maintenance laws to give at least a temporary strength to the widow, to stand by herself. I am only opposing those ladies who want to take away a chunk of their father's property and leave the husband alone. May God save us from them and from having an army of unmarried women.

**Shri T. N. Singh** (Uttar Pradesh): Sir, I have an amendment in my name.

Mr. Speaker : All those who have tabled amendments and others also will get a chance.

**Shri Raj Bahadur** : I have listened very patiently to the speeches of the hon. Members who have spoken before me, although I raised certain pertinent questions for them to throw light upon. [I find myself in complete agreement with the provisions of this Bill.] And my support is based not on any misplaced enthusiasm or the rashness of youth, but because I feel that this measure is necessary because of the exigencies of the moment and the situation created by the attainment of independence by our country. I feel that unless we have a measure of this kind and keep peace with the times, we are bound to fail.

It is well known that perhaps during the last three years no other Bill or legislative measure has provoked so much controversy as the Hindu Code Bill, and passion, prejudice, sentiment and superstition have all come in to cloud our judgements. It is a little difficult in an atmosphere so surcharged with superstition and suspicion for the country and also for this House to come

to a balanced conclusion, a balanced judgement on the merits and demerits of the Bill.

The critics of the measure can be divided into three categories. First of all there are the people who like the Hon. Deputy-Speaker genuinely and sincerely feel that we are definitely marching ahead of the time and the adoption of a measure of this kind would do us harm, that it would harm Hindu society which would be irreparable. Then there are others who day in and day out criticise those who are responsible for this measure, and to them what matters is not what is being said, but who says it. These people have clouded the judgements of the masses also. It is well known that our masses are ignorant and they are tossed violently between these two extremes. It is also well known that when a country attains Independence, there is a natural desire felt by the people to have uniform laws and to codify their existing laws. This has synchronised with national awakening. This is not the first time that such a desire has been expressed by the Indian people, through their representatives in the Legislature. As early as 1921 there was a resolution to that effect by a Member from the Central Provinces. Shri K. J. Bagde and Sir Tej Bahadur Sapru was the then Law Member. The resolution was to the effect that all the various branches of the-Hindu Law as then existing should be properly codified. From time to time this question was also raised in the Central Legislature and I find that as eminent a person as Shri Ganganath Jha has put a question on the floor of the House asking when the codification of Hindu Law would take place. We may note that that was also a period of national awakening and this desire to codify the law was being voiced at that time.

The option has been expressed that this Code should be made applicable to non-Hindus also, to Christians and Muslims and others also that there should be a common Civil Code. Articles in the Constitution have been referred to and it has been said that this Code violates some of those articles. But I am sure when the Civil Code comes up for consideration, these very same persons would come forward to say that this Civil Code violates article 44 which guarantees the liberty of thought or religion. That will be the objection raised, of that I have no doubt in my mind. The demand for a Civil Code, seems to be bogus and without any meaning.

If we apply our minds to the present condition of Hindu society we will find that there are various differences and divisions in various matters, in the matter of marriage, of adoption, of succession and so on. It is impossible for the country to make any progress unless there is some codification of these various laws. So far as other sections of society are concerned they have this in some measure. For instance, Christian and Muslim women have some rights and privileges which are sought to be given to Hindu women by this Code. Christian and Muslim women are now entitled in some measure to the right of inheritance. In the case of Muslim women, divorce is also obtainable

to them.

**An Hon. Member:** No.

**Shri Tyagi:** It is not a right but a liability.

**Shri Raj Bahadur :** You may call it a liability but I would request you to apply your mind to the provisions of the Bill. There are many instances where a Hindu has deserted his wife for more than five years. Hindus have changed their religion and there are instances where Hindus keep other women while their first spouse is living. In such cases of immorality will you not come out with your galantry or chivalry and allow divorce to such miserable Hindu sisters ? The right has been given to a Hindu male to marry four or five times. If the sanctity of marriage is there it should be for both man and woman. If a woman is expected to be pure, chaste and faithful to the husband, is it not for the man also to bind himself by the same obligation ? Why should it be one-sided. If we say that man is God's favourite creature, it will not help our society or country in any way.

Let us look at it from another angle. In the present state of the world whenever there is a threat to the frontiers of a country and there is a war, it is not fought on the old lines. It is a total war. In the last great war while British men went to the trenches and the firing line, British women folk applied themselves to the various tasks of national responsibility. For example, they ran railways, worked on the buses and in ammunition factories. Unfortunately it is a fact that we regard woman as a liability, as something which is below ourselves. The common man's conception of a woman is that she is like the shoes on our feet. If they are torn we can throw them away and take a new pair.

**An Hon. Member:** Is that the conception in Rajasthan ?

**Shri Raj Bahadur:** That is so not only in Rajasthan but in most of our rural areas. It is so in high families also. It is time that we realise the bitter truth. It is time that we recognise it if we want to shoulder the responsibilities that have devolved upon us as a result of our independence. If we want to make our home and this country Bharat Varsh secure we should have to see that our women folk are brought on a par with man. It is not Westernism or Modernism but the exigencies of the moment that require it. You cannot face all the threats to your security as a nation unless you radically change our attitude towards the women of our country. It is impossible to go ahead with the task of reorganisation of our country unless and until our women get the same status as man in our society and it is a patent fact that today that status is not granted to them. Unless and until the law that is there is codified and brought within the reach of the common man it will be impossible for our people to be unified.

May I in this connection refer in passing to the difficulties that we are experiencing today ? Our law has been what the British Judges in the Privy Council have interpreted till now. It is a well known fact that conflicting

judgements exist on the same points. For example you can cite many contradictory rulings on either side. Apart from that the law as it exists today is only within the reach of experts, lawyers or judges and the common man does not know what the law is. Is it not good that by codifying the law and making it more rational by modifying it to the extent desirable, we may make the law within easy reach of the people ? Otherwise our progress towards unification and solidarity will be impossible.

The question before us is not whether we should codify. Even the bitterest opponents of codification have veered round to the opinion that codification is necessary. How far should we codify it, is the question. There are only three or four points which have aroused bitter controversy.....

**An Hon. Member:** This is not a general discussion.

**Shri Raj Bahadur :** It is a discussion on the points hon. Members have made that the whole Code should be made applicable to the entire nation.

Bitter controversy has raged firstly about divorce and marriage laws and secondly about inheritance. I will confine myself to these two important points. I would say that the provisions of the Bill and the latest amendments proposed by the Hon. Law Minister may be modified to a certain extent, if we find that we cannot go whole hog. But so far as the basic principle of divorce is concerned we shall have to recognise it.

I might give you an example. If a man happens to convert himself to Islam or any other religion, at the present time his wife and children are also compelled to do so. Is it not necessary that at least in such cases our women folk should be allowed to remain within the Hindu fold ? Can anybody object in principle to divorce being allowed in such cases ?

So far as inheritance is concerned I am not in favour of allowing the daughter any share after her marriage in the father's property. But if she is unmarried she must be allowed the same as her brother. That is an amendment which would meet the viewpoint of my learned friend Pandit Thakur Das Bhargava.

In conclusion, I would say that so far as the opposition to the Bill is concerned it has made out of certain political considerations also. The elections are looming large on the horizon and people consider any stick good enough to beat the Congress with. People outside the Congress are trying to whip up passion against the measure just because the elections are coming. They want to use it as a weapon in the election fight. It is therefore meet and proper that we should consider each provision of the Bill as coolly as possible, thrash out every issue threadbare, so that people may be able to see the Code in the proper light without the mist that now surrounds it. It is obvious that when we come to the clause by clause discussion, most of the superstitions and suspicions will be removed and controversial matters may be settled by mutual agreement and nothing will be there which will offend public conscience and public morality.

With these words. Sir, I oppose the amendments moved and support the clause

[MR. DEPUTY-SPEAKER IN THE CHAIR.]

**Seth Govind Das** (Madhya Pradesh): First of all I want to say that it would have been very good if.....

**Shri Hussain Imam** (Bihar) : On a point of information. Sir; Will the Hon. Minister of Works, Production and Supply, who is now here, tell the House about the tragedy of the Delhi clock tower ? The Delhi clock tower has fallen.

**Some Hon. Members:** This is not the time.

**Seth Govind Das** : You can ask that after the speech, not in the middle of it.

**Mr. Deputy Speaker:** It is possible some hon. Members are anxious to know what has happened. If the Hon. Minister has any statement to make he may do so after Seth Govind Das concludes his speech and we shall have an opportunity of having more information about the tragedy.

**Minister of Works, Production and Supply (Shri Gadgil)** : I have learnt about it only an hour ago. Secondly, I am not administratively responsible for what has happened in Delhi. The property known as the clock tower is managed by the Delhi Administration and probably by the Delhi Municipal Committee. But if it is the desire of the House that it should know some facts I shall try to contact the proper authority and at about five I may be able to give some information.

**Mr. Deputy Speaker:** Yes. The hon. Member may continue his speech.

**Seth Govind Das:** *\*(English translation of the Hindi speech)* Sir, I was submitting that it would have been very good if the Hon. Minister has not introduced this Bill at the present time. When I say this, it should not be inferred that I want to stick to the old customs or want to follow all that is given in our *Smrities* and *Vedas*. I have some knowledge of Sanskrit and I love my Indian culture, therefore, as far as *Smrities* and *Vedas* are concerned, they are not of the same opinion on every subject. If one *Veda* or *Smriti* says one thing regarding a particular subject another *veda* or *Smriti* says another thing regarding the same. We have always been lover of knowledge. Knowledge has always been given first place in our history and culture. We have admitted the fact that *Kalabheden dharm bhedah* i.e. Religion changes according to times. I admit that we need reforms and reforms should also be brought about through legislations. I remember the days when Raja Ram Mohan Ray pleaded the case for the abolition of *sati*. Even in those days there were people in the country who were in favour of *Sati* custom. I also remember those days when Iswarchandra Vidyasagar advocated the cause of widow remarriage and it was strongly opposed. Enough has been said regarding Sharda Act. I admit that child marriages have been prevented to a

large extent due to the Sharda Act and to a greater extent this Sharda Act has tried to put an end to this bad custom of ours. Therefore, I admit that we have always been rational in our outlook. We should not follow the *Vedas* and *Smritis* blindly and we need laws to reform our society. But I could not understand one thing which our Minister said yesterday. He laughed at those persons who suggested that this Bill should be made applicable to the entire society as a whole. If we want to get our different societies knit in such a way, if we want to create such a society where there should be no class or caste distinction or so much difference as at present, then I submit that we need such a law which may be applicable to the entire society without any distinction. Yesterday, the Hon. Minister made certain observations which in my opinion do not befit him, it is just possible that I may be wrong. I thought that he became somewhat irritated and lost his temper or he felt that we were putting obstruction in the passage of the Bill. But this is not the thing. This is the opinion of the most of the people, and I am one of them, that it would have been far better had this law been made applicable to the entire society without distinction. According to the Hon. Minister, it will be a matter of great pleasure if such a Bill could be introduced within two days. It will be very good if this Bill could be got passed within half an hour. It was not a good thing for our Hon. Minister, holding such a responsible post, to laugh at those people who hold different opinions than what he holds. It has been clearly stated in our Constitution, it may not be in the chapter relating to fundamental rights but it is in the preamble chapter:

" That State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India."

It has been clearly stated in our Constitution. The Bill which has been presented before us today is opposed to this clause. We have suffered a lot as a result of this class and caste distinctions. After attaining independence, we framed our Constitution and this is the first social Bill which has been presented before us after the passing of the Constitution. We should have incorporated some of the ideals in this social Bill and that could have been easily done., if only this was to be applied to the entire society. If some clauses of this Bill are deleted and the good ones selected then a Bill could be prepared which could be applied to the entire society as a whole. Then, the people who are opposing this Bill today would not have done so.

There is one thing more and which is quite apparent. There are many good things in this Bill as well. I would rather say that it abounds in good things and the points of disagreement are very few. There is one important point in the fundamental things, which have been laid down in this Bill. One of the disputed points is that women should also be given the right of succession to property. It is easy to say a thing as my friend Shri Syamanandan Sahaya has done, I hold him in great esteem, by declaring that we already treat women as masters of our household. I would like to tell him that that is akin to the maxim

" the safe is yours but let the keys remain with me." We have seen and are aware of the consequences resulting from non-existence of the rights of women to property. We know of the lives that many women had to lead. Will Shri Syamanandan Sahaya or those who are of his opinion deny the fact that many a chaste and respectable women belonging to wealthy families had to lose their prestige and status on account of having been left without property ? As far as I am concerned, I have, therefore, no difference of opinion about women's right of succession to property. The question is whether they should obtain share in the father's property or in the father-in-law's.

**Giani G. S. Musafir** (Punjab): There is no objection to father-in-law's.

**Seth Govind Das:** So this is a big question. Today our system of marriage is such that the woman goes to her husband's place. There was also a time when there existed no system of marriage in the society. The story of Uddalak and Shwetketu in the Mahabharata clearly shows that there was a time when no marriage were held. Then came a period of matriarchy, where the husband used to go to the wife's place and the female child among their children inherited the property. That system still prevails in some places, in Malabar for example. Then the period of patriarchy came. Most of our social structure today comprises of patriarchy, not matriarchy, and how far would it be proper to make a woman inheritor of father's property in such society is a controversial matter. I would like to impress that so far as the women's right of succession to property is concerned that must be there, but that should exist in such a manner that an unmarried woman should be entitled to it at her father's place and a married one at her husband's.

There are also some other clauses of this Bill about which there may be a difference of opinion. So far as this Bill is concerned. It incorporates two things. First, various existing laws have been amalgamated. Secondly, some clauses for the purpose of social reform have been added. As I had just said, it would have been in the fitness of things had this Bill not come up. When our President Dr. Rajendra Prasad was the President of the Congress, he had pleaded for not presenting such a Bill and so according to him it had better not come up. But now it has been carried so far that if it is withdrawn at this juncture, various interpretations shall be forthcoming for that. The next election is before the people. I do not give very much importance to the elections and believe that the Congress is not so ineffectual that if the present Bill is passed and people are told that the Congress has done it, the Congress Party would be defeated. But if the Congress is such a trifle that it can thus be defeated. I would say that the earlier it is defeated the better. So I differ from those who keep the elections before them and proceed with that point in view. I have recollections of 1923 and 1926 when the Swarajya Party went to polls for the first time. I was a candidate for the Central Assembly from the Zamindar party and it was being said that the Congress and zamindars were far apart, that zamindars would not vote with the Congress ;

but still nobody contested my seat. After that I stood again for the Council of State in 1925 and then too it was doubted whether the voters of the Council of State would vote for the Congress. Sir Manekji Dadabhai and Sir Hari Singh Gour opposed me, but I got three-fourth of the votes. Therefore, I do not consider the Congress to be a touch-me-not institution which may wane into a defeat if we pass such a Bill, which thought may continue to give us a constant fear of elections. I am of the opinion that if we are in favour of this Bill and if our leader, our Prime Minister, considers that it should be passed, it would be a mistake for us not to pass it for fear of elections. It is a different thing if we do not want to pass it. But if we do not pass it for fear of elections, there would be nothing worse than that. And I would say a word to those also who would not like to see it go through for fear of elections. If the Bill is not passed now, they shall find people saying that if the Congressmen were returned they would do such things as were not there even in the Bill. Such horrid pictures would be drawn before the people the like of which we cannot even imagine today. So we have not to deal with this Bill for consideration or fear of election. We have to deal with it on its merits. In this connection, I would reiterate before the Hon Minister what I have just said, namely, that the Bill has two parts—one of amalgamation and the other of social reforms. We are utterly opposed to many provisions of social reforms. I want that under the prevailing circumstances in the country all such provisions should be left out because their incorporation is inopportune. Things over which there is divergence of opinion should be excluded and those of amalgamation may be taken up. I make considerable distinction between these two things and wish the Hon. Minister to give sufficient heed to this suggestion of mine. I want that so far as amalgamation is concerned we should take that up as also the provisions with which we are not at variance and these provisions may be passed. Those provisions that are controversial and with regard to which there is going on a campaign in the country should be left out. We must let the next election take place when representatives would be elected on adult franchise. If at that time we think it necessary to bring up the provisions concerning social reforms, we may move them as amendments to this present Bill and pass them. Such an approach will cover both the things. It would bring about an amalgamation of the laws and with that we would also avoid the controversial points.

One thing more should be done. As my friend Shri Jaspat Roy Kapoor said, its application should not be made obligatory on all people. Of course, such social reforms should be brought about through legislation ; but it is imperative to mould public opinion in their favour. It would not be ill-advised to make it applicable only over those who accept it and not try to make it binding on the entire population. Therefore, I would again submit that it were better for this Bill not to have come up before us at all. I am also of the opinion that in keeping with the ideals of our Constitution if we could make this Bill in the

times to come applicable to the entire society, according to the amendments moved by Shri Jaspat Roy Kapoor or others we must endeavour to make it such. Along with this we should also endeavour not to make it applicable compulsorily over the people. It may be applied to those people only who accept it, or else in the existing conditions we may leave out its controversial portions and so far as the matter of amalgamation goes, we may do it in as much as we are unanimous about it.

**Shri Hussain Imam** : Sir, today I also want to speak in my own language as our Seth Govind Das has delivered a good speech.

**Prof. Ranga** : Why not speak in English, so that we may follow ?

**Shri Hussain Imam** : In considering the Hindu Code Bill, ordinarily, I would not have taken part in the debate, because it is a measure applicable to my sister community and as such they should have the right to have whatever they wish for themselves.

**Shri Tyagi** (Uttar Pradesh): But the amendment covers you.

**Shri Hussain Imam**: That is the reason for my rising to speak. Some of my hon. friends are anxious to bring us under the purview of this measure. Well, there would have been no objection on our part to come under a common code had it been in advance of our own system. But my complaint is that it is very much backward; and you want to draw up and bring us down to the level to which you have brought yourself down. I, therefore, wish to be excused from coming down to your level.

I may mention that the Hindu Code Bill has a very long history behind it. At one stage of it I had occasion to participate in the Committee on Hindu Law that was appointed in 1944-45. As such I have my sympathies with those who wish to advance the cause of the weaker sex. I believe that no country or society can advance if it has got submerged and suppressed people in its fold. It is very necessary that everyone should have equality before the law and in the matter of inheritance and other things. But it would be idle on our part to ignore the feelings of others. Feel as I may for myself. I must also realise what others are feeling, and as you. Sir, very poignantly pointed out, it is very necessary that there should be no dictatorship.

The Hon. the Law Minister in his speech in the Constituent Assembly, on the memorable day we completed the drawing up of the Constitution, said as follows:

" It is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new— there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater."

I commend to him his own speech and ask whether it would not be dictatorship on the part of this house to dictate to the thirty-six crores of

people of India to come under a law compulsorily, just as the old orthodoxy was denying the right of going forward to the more-advanced members of society. It is a dictatorship which a minority is going to exercise on a vast majority. I wish to tell my sisters and the reformist brothers that they must take heart. In everything there is a fair way of fructification. They have the whole field before them. I find that orthodoxy is not only not aggressive, but is on the defensive— is putting on the garb of reformists to fight its retreating battles. It is fast losing its momentum. We have the eternal dilemma of an irresistible force meeting an irremovable mass. But that mass is becoming every day lighter and lighter and its roots are getting uprooted every day. Therefore, this orthodoxy will not remain adamant, as it has been in the past. But is it necessary that the reformist should become aggressive? Should they play the game of the old orthodox people and try to dictate what they feel to be the best to people who do not regard them as the best but as the worst ? Why should you do that ? That is the question and in that question my community also joins.

We feel that our system of law, and our system of distribution of wealth is more democratic and more socialistic and more, if I may say so, akin to the communistic, than the system which is proposed in this piece of legislation before us.

I think the major amendments to clause 2 can be divided into three categories. Firstly, some of the amendments, notably amendment Nos. 13 and 14 of the Consolidated List want to increase its applicability. Amendment No. 13 of the supplementary list also. Then there are certain amendments, like No. 18 which wants to decrease its applicability. Then there is the third category, which wants to restrict its applicability to only those who wish to come under this. I think it is a very good media which has been suggested by Shri Jaspat Roy Kapoor and deserves the most serious consideration of this House— whether it would not serve our purpose by having a better code than the reformed Code which Dr. Ambedkar has brought before the House. He had to give some concession much against his wish.

I wish to state a few facts for the consideration of the House. These facts are that the Bill sought to be amended by Dr. Ambedkar is so materially different from the Report of the Select Committee that we should in common justice recirculate these amendments and get the opinion of the country whether they wish to have this in the form in which they have been brought or not, and there is no time for that. This House is under dissolution. It will last probably, if things do not move in an untoward direction—which may quite possibly happen on account of the war—for a few more months. Now, I ask my lady friends and reformists whether it would not be better for them to take up the challenge of the orthodoxy now. According to Shri Jaspat Roy Kapoor's amendment it is only a question of how far you are going to get the co-operation of the people to come and be under this Act. There is no

occasion better than the election. In the election booth all the adult population of the country will be coming. If you have a system of registration running side by side with the election booth and have a register in which every voter will put in his thumb impression to indicate that he is willing to come under this Code, you can get the mandate of the people. Then you can confront orthodoxy and come and say that a vast majority of the country wants this reform, orthodoxy must go back and the day has been won for the reformists. But you do not do it. If you do not seriously convert the people to your idea, why do you ask that this body should get the odium of thrusting something on the people which it is professed they do not want and which you are unable to prove they want.

I therefore suggest that if the Hon. the Law Minister is not prepared to accept the amendment of my hon. friend Mr. Jaspat Roy Kapoor *in toto*, he may at least follow the example set in the *Shariat* Act of ours where parts of it were made compulsorily applicable to all but parts of it were reserved for only those who would come and get themselves registered. This is the second suggestion which I wish to make to the Hon. Minister.

**Shri J. R. Kapoor :** Will the hon. Member please say which are those parts ?

**Shri Hussain Imam:** I wish to state that there are certain parts to which very serious objection has been taken, notably by you. Sir, about the distribution of property to the daughter. If you want that this portion should not apply to all, you can make it a provision of this nature, namely, that this part—Chapter IV—may apply only to those who wish to come into it.

I would also mention the possibility of the grave dangers which this amendment of Dr. Ambedkar on the question of property has brought in. My valued friend Pandit Thakur Das Bhargava suggested that the girls should get a share while they are unmarried and when they get married they should be entitled to the husband's property in the father-in-laws' s house. But you must not forget the divorced women. How has the modern *Manu* provided for them? Dr. Ambedkar has not provided for the divorced women who are deprived of the share. He has provided for the share to remain permanently for the girl—half a share for the unmarried girl and quarter of a share for the married girl. But Pandit Thakur Dasji has suggested no share for the divorced woman. Under Dr. Ambedkar's rule she will continue to have a quarter of a share. But Pandit Thakur Dasji would deprive her even of that quarter share because as soon as she gets married she will have no share.

**Pandit Thakur Das Bhargava:** According to me she would be entitled to the rights of partnership in the property of the new husband.

**Shri Hussain Imam :** If she does not remarry ? I therefore think that another danger of the provision made by Dr. Ambedkar is that it might lead to immorality—the provision that on marriage a woman will lose half of her property and will be entitled only to a quarter of the father's property. A rich

girl would never marry a poor husband.

**Dr. Ambedkar** : Why bother about the rich ?

**Shri Hussain Imam** : As long as you have not changed the system and do not go to the Moscow-Peking axis of my hon. friend Brajeshwar Prasad, you have to care for wealth and capital. When you come to that day you will no longer bother about this. I was rather surprised that Dr. Ambedkar who is a born democrat should have made disparaging remarks about the electorate. The electorate with all its ignorance is the only touchstone by means of which we can test democracy. If that is removed, democracy will become meaningless, lifeless and only an effigy of democracy. Because, what did Hitler do? He had elections, but a system was evolved by means of which elections were made.. *(An hon. Member. Easy)*.. not easy, but they were made only a cloak to cover the dictates of the dictator. The same thing will happen if we accept this dictum that the electorate has no right and the right is reserved to the Members of Parliament alone to decide whatever they like and in whatever manner they choose to do.

I would again mention one fact, not the competence of this House— I would be the last person, having been for twenty years in the Central Legislature, to question the competence of this Legislature—but would it not be better to leave a measure of this nature to the popularly elected representatives who would come to this House with the direct mandate of the electorate ? I am suggesting this as a method of finding out the will of the people. As long as we pay at least lip service to democracy our ultimate masters and the arbiters of our fate are the electors. This is going to affect all. I wish to warn the House that as against the Bill as reported by the Select Committee, as a result of the change of the Constitution, we are going to hit each and every individual property. Even a small farm of an acre of land is not free from the ambit of this new Bill, because land is now brought in under the purview of the Central Legislature, whereas what the Bill as reported by the Select Committee affected was only fifteen to sixteen per cent of the population. Is it proper, is it democratic for you without going to a Select Committee even to so change the nature of the Bill that it will affect hundred per cent. of the citizens of India—because Land has now been brought into the purview of the Central Legislature ? I very respectfully beg to suggest that it is not proper for this Legislature, keeping self-respect in view, to go so much forward without even the formality of having a Select Committee to go over it. I know that now it is no good crying over spilt milk. But I am bringing all these arguments in favour of making this Bill elective. I do not say, having advanced so far and having made so many mistakes in the past, that you should now brush it away. But at least you should have the decency to say that you will allow the people to have their choice whether they wish to be under this Act or not. This choice may be either general as my hon. friend Mr. Jaspat Roy Kapoor has suggested, or it may be restricted as I am suggesting now for the

consideration of Government.

5 p.m.

[MR. SPEAKER IN THE CHAIR.]

Government have got ample time according to present estimates. The Bill is not going to be proceeded with immediately now. Therefore it is possible for Government to reconsider their position. In all humility I would appeal to Government to give it their best consideration and make it elective in full and if that is not possible for having it at least in part made elective and not compulsory. Otherwise it will be dictatorship and not democracy.

**Mr. Speaker** : We will now take up the half an hour discussion.

**Shri Gadgil**: A request was made by hon. Members to let the House know about a certain accident that has happened in the morning in the Chandni Chowk.

**Mr. Speaker**: I think it had better be taken at 5-30 instead of now.

HINDU CODE— *contd.*

**Clause 2.**—(*Application of Code*)—*Contd.*

**Shri Naziruddin Ahmad** (West Bengal): I have a point of order....

**Shrmiati Durgabai** (Madras) : On what subject, may I know, is the hon. Member raising his point of order ? There is no subject before the House on which the point of order could be raised. First of all the motion should be moved.

**Shri Sondhi** (Punjab) : Who are you ? You are not sitting in the Chair (*Interruptions*).

**Shrimati Durgabai** : The motion must be made first.

**Mr. Deputy Speaker**: The business before the House is further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 of the Bill is under consideration.

**Shri R. K. Chaudhari** (Assam) : Before anything is said or done I would earnestly appeal to the House through you. Sir, that there need not be any unnecessary excitement. I am constrained to say that the conduct which has just now been shown by Shrimati Durgabai is far from such and is...(*Interruptions*).

Further more I wish to know whether the attention of the Government has been drawn to a Press news published yesterday, namely, that even if this Bill be passed the President may withhold his assent and so far..... (*Interruptions*).

**Mr. Deputy Speaker** : Order, order.....

**Shrimati Durgabai**: May I give an explanation since the hon. Member has referred to me ?

**Mr. Deputy Speaker** : Not while I am on my legs ...

**Shrimati Durgabai :** You must give me an opportunity to answer what the hon. Member has said (*Interruptions*).

**Mr. Deputy Speaker:** Order, order. The hon. Member who advised another hon. Member not to be excited is himself excited. One should sit on the right and the other on the left.

So far as the reference to the President is concerned his name ought not to be canvassed for the purpose of this Bill one way or the other. Rule 159 (vi) says that a Member while speaking shall not use the President's name for the purpose of influencing the debate. The President's name ought not to be referred to here at all.

**Shri Kamath** (Madhya Pradesh) : Not on a point of order, but on a point of propriety, when such a measure as the Hindu Code is before the House, is it quite proper for the Hon. Law Minister to have such a big basket before him ?

**Shri R. K. Chaudhari :** This does not fit in with the serious topic before the House. I want to know if it is a fact that the President will address this House on the Hindu Code.

**Mr. Deputy Speaker:** No reference to the President can be permitted irrespective of anything that might have appeared in the papers. Now, what is the point of order of Mr. Naziruddin Ahmad ?

**Shri Naziruddin Ahmad :** *rose—*

**Sardar B. S. Man** (Punjab) : Before the hon. Member makes his point of order, may I say. Sir, that you have made certain observations previously in the debate that in your kindness you show certain concessions to lady Members here. Now when we are going to discuss this Bill may I request that henceforward you will treat hon. lady Members and men Members on an equal footing and no concessions will be shown to lady Members ? It is high time for them to make up their mind either to have the concessions or to have the Hindu Code Bill (*Interruptions*).

**Shrimati Durgabai :** I would like the Chair to give a ruling. It was a fact that the Chair said sometime ago that special concessions were sought or asked for by the women Members and it is a fact that the women Members had emphatically protested that they did not want any special concession at all. Therefore, the hon. Member is quite wrong in saying what is not true.

**Mr. Deputy Speaker :** I am fully aware that lady Members do not want any special concessions for themselves : it could not have been their intention. If therefore, I had made any such remark I thought that it would be taken in good humour and it was not my intention to cast any reflections. I know very well that no lady Member has ever been in need of any concession or indulgence. So far as I am concerned I have got both sons and daughters, and therefore, I shall try to be absolutely just. Now what is the point of order ? With respect to points of order I may remind hon. Members that they may state their points cryptically without any arguments, unless I want some elucidation with regard to them. I hope hon. Members will bear this in mind.

**Shri Naziruddin Ahmad:** I shall state the point of order and elucidate it very briefly just to make it intelligible.

**Mr. Deputy Speaker :** If I fail to understand I will ask the hon-Member.

**Shri Naziruddin Ahmad:** My point of order concerns the applicability of the Bill to the former Indian States, some of which are now known as Part B States and some others have been incorporated in Part A States. The whole point is directed towards that question and I am directing my mind to that.

**Hon. Members :** What is the point of order ?

**Pandit Maitra (West Bengal) :** Is it the hon. Member's point that the Bill has not been published to them ?

**Shri Naziruddin Ahmad :** Yes, the Bill has not been published to them.

**Mr. Deputy Speaker :** I have understood the point of order. 10 A.M.

**Shri Naziruddin Ahmad :** I have to state a few facts.

**Mr. Deputy Speaker :** " Few facts " are not necessary so far as this point of order is concerned.

**Shri Naziruddin Ahmad :** There are rulings of the Chair on this point. I wish to draw your attention to this point which was raised by Mr. Sarwate on the 24th February, 1949 ...

**Mr. Deputy Speaker :** The House is on clause 2. Is this relevant so far as clause 2 is concerned ?

**Shri Naziruddin Ahmad:** Yes, clause 2 will also apply to the former Indian States.

**Mr. Deputy Speaker :** The hon. Member knows too well that the scope or the extent of the operation of this Bill is governed by clause 1. Clause 1(2) says:

" It extends to all the Provinces of India."

This point of order may be relevant as to whether in this unrestricted manner it ought to be allowed, or whether, as it was originally framed, it does not apply under the Constitution. There may be many reasons for and against, but the point of order may be raised at that stage, not at this stage. Now we are going into general considerations : if they do not apply to Part B or Part C States, we will restrict them when we come to clause 1.

**Shri Naziruddin Ahmad :** It will lead to inconvenience ; that will no doubt come formally, in due course : we should not be made to wait till that time.

**Mr. Deputy Speaker :** I have given my ruling. The hon. Member does not say that this clause 2 will not apply to any State whatsoever ; if it applies even to a small village in a single State in the whole of India we shall proceed with clause 2. When we come to clause 1 we shall eliminate all the others where it ought not to apply under the Constitution.

**Shri Naziruddin Ahmad :** The difficulty is this. If the Members belonging to the States know before hand that the Bill will not apply to them, they will not trouble themselves about the matter and discussion will be shortened. But on the other hand, if they are in the dark as to whether it will apply to them or not,

they will have to partake in the debate. So, in order to clarify the situation we ought to know where we are and where they are.

**Mr. Deputy Speaker** : The hon. Member knows too well that we come back, after exhausting all the other clauses, to clause 1. Any hon. Member who is a representative of the States may proceed on the footing that it will apply—he may do so in the first instance. Then he may make an effort along with Mr. Naziruddin Ahmad to get it out. There is time enough.

**Shri Syamnandan Sahaya** (Bihar) : Before we proceed with the Bill, I think the House is entitled to know the procedure which has been adopted from the papers we learn that only two parts of the Bill, concerning marriage and divorce, will be taken. It will be desirable for the Hon. Minister to explain the position so that the House may know in what direction we are proceeding and how this matter is ultimately going to be decided. That is one point to which I want to draw your attention. Sir, and the attention of the House. The other point to which I want to draw your attention and the attention of the Hon. Minister and of the House is this. Now the appearance of the Bill seems to be such that it is difficult to recognise it. As a matter of fact, the Hon. Law Minister himself, who is the Mover of the Bill, has sent in a very large number of amendments some of which reached us even yesterday. You will appreciate the importance of a Bill like the Hindu Code. You have also seen the seriousness that is attached to this Code by the Members of this House. We are really in a difficult position to find out suddenly what the amendments are, what the implications of those amendments are, and whether amendments to the amendments should be sent because that is what will form the main basis of discussion, namely the amendments of Dr. Ambedkar. These are the difficulties that are facing us. In order that the Code may go through the House properly and ultimately the decision of the House may be such as to evoke respect in the country, it is desirable that some time is given so that the amendments may be read. You will remember. Sir, that when the Bill was introduced and sent to the Select Committee there was a Select Committee report. After that Dr. Ambedkar sent a large number of amendments. On the one side we have the amendments, on the other side the Select Committee's report ; now, even those amendments are no more there—fresh amendments have been sent. All these are to be consolidated and placed in a manner in which they can be conveniently considered, and considered in a manner which the importance of the Code deserves. I think we should adopt some procedure by which these amendments can be considered carefully. I would also like the Law Minister to let the House know what is the latest decision of the Government with regard to the procedure to be adopted with regard to the Hindu Code.

**Shri R. K. Chaudhari** : I will put another question so that it may be answered along with this ...

**Shri B. Das** (Orissa) : May I submit. Sir. ...

**Mr. Deputy Speaker :** Nothing more.

So far as the amendments are concerned, a set of amendments were tabled by the Hon. Law Minister originally and subsequently to these amendments he has tabled another set of amendments.

**The Minister of Law (Dr. Ambedkar) :** A few—verbal.

**Mr. Deputy Speaker :** Even if they were substantial they have all been circulated as early as the 5th September. But if any hon. Member, during the course of the debate, move an amendment to any particular amendment, and if it is reasonable, we will consider it.

**Dr. Ambedkar :** Certainly, I have no objection.

**Mr. Deputy Speaker :** I am not going to be too technical with respect to those matters here. After all, the Hon. Minister has been saying that he would like to have as much as agreed solution to these problems as possible. Therefore, every efforts will be made on all sides of the House towards it. I shall never be wanting, if it is possible, in trying to smoothen and to get over the rules of procedure or to suspend standing orders for bringing about an amicable settlement so far as any clauses are concerned. Hon. Members may have no difficulty. But so far as once again piecing the amendments together and circulating them again is concerned, hon. Members know too well how we were in an ocean of amendments so far as the "Representation of the People Bill was concerned ; the Speaker could not know the amendments, a number of new amendments were given to the hon. Minister himself. This is not such a forest in which we cannot get in. After all, there are a few amendments to the original amendments and we can proceed.

**Shri Syamnandan Sahaya :** One other submission.

**Sir Mr. Deputy Speaker :** Hon. members must make up their mind to go on with the Bill.

**Shri Syamnandan Sahaya :** That we have made up.

**Shri B. Das :** Is he permitted to speak again ?

**Shri Syamnandan Sahaya :** There is one other submission which I will make. Sir. We have been following a procedure, namely that all the amendments are first moved, then they are discussed together and then decisions are arrived at. I would submit that in the case of the Hindu Code that will not be possible because every amendment has a particular significance ; it is not a question of a cut motion being discussed or of a budget demand being discussed; it is a question of every amendment having a particular significance, having a particular importance. Therefore, I would submit that in the case of the consideration of the Hindu Code these amendments should be taken up one by one ; each amendment should be taken up, discussed and then decided upon—either accepted or rejected—and only then the next amendment taken up. That, I submit, ought to be the procedure with regard to this Bill.

**Shri R. K. Chaudhari:** May I ask for only one piece of information ? There

are certain amendments which have been tabled now after we had a discussion on this Bill in February last : these are new amendments which have been tabled since. I want to know whether those Members who had taken part in discussion in February will be entitled to speak on the new amendments now.

**Mr. Deputy Speaker** : I shall consider the suggestion when the time arises. So far as these amendments are concerned what I propose doing is this. Normally the procedure is that each amendment is taken up and disposed of and then we go to the next. But here, if there are amendments of like nature, except the form of expression if the substance is the same then I will ask hon. Members to move all those amendments together so that a single discussion may proceed. Those amendments which are substantially different. I will place separately. It would be helpful if the Hon. Minister is able to tell me what all amendments are of like nature ; hon. Members may also consider the point when amendments are moved; if they find other amendments which are substantially of a like nature they may also rise and ask that they be moved together, and the discussion will proceed on all of them together.

**Shrimati Renuka Ray** (West Bengal) : If people are willing, we might have a time-limit on speeches.

**Hon. Members** : No, no.

**The Minister of Works, Production and Supply (ShriGadgil)** : It will be better for the Chair to select a group of amendments which contain the same substance, and that group may be put down for discussion. That will avoid wastage of time.

**Mr. Deputy Speaker** : That is exactly what I said. I have no time to group them myself. I shall ask hon. Members, as soon as an amendment is moved by Dr. Ambedkar, whether they have amendments of a like nature relating to the same subject. If they have, then I shall piece them together and have a common discussion. That is for tomorrow.

As for today, let us proceed with the business. Clause 2 was under discussion.

**Shrimati Renuka Ray** : Would you put my suggestion to the House, Sir?

**Shri Syamnandan Sahaya** : Has the Hon. Minister got nothing to say on the points that I made ?

**My Deputy Speaker** : I do not think he wishes to say anything. Does he want to say anything ?

**Dr. Ambedkar** : No. Sir.

**The Minister of Education (Maulana Azad)** : The Prime Minister will explain it.

The Prime Minister (Shri Jawaharlal Nehru) : I am sorry I was not here when the hon. Member spoke.

**Mr. Deputy Speaker** : He wanted to know if there are any portions of this Bill that are not to be considered. Clause 2 was under discussion previously

and naturally I wanted the discussion to proceed and I was about to allow amendments to be moved. Meanwhile, the hon. Member wanted to know whether the Hon. Minister is taking up any particular portions of this Bill first and giving them preference.

**Shri Syamnandan Sahaya** : In view of the reports in the Press, I wanted to know the correct position.

**Shri Jawaharlal Nehru** : I think the day before yesterday I did say something on this very subject, that is, we propose to take up Parts I and II of this Bill and if time permits we shall take up more. In any case, we do not want to leave the matter unfinished in regard to these two parts. We should like to finish them, even though in regard to the rest what we shall do depends on time.

**Shri Kamath** : Has any definite number of days been earmarked for the consideration of this Bill ?

**Shri Jawaharlal Nehru** : We expect that we shall finish it within this week.

**Shri Syamnandan Sahaya** : This month or this week ?

**Shri Jawaharlal Nehru** : This week, I said.

**Dr. Ambedkar**: With your permission, I should like to move amendment No. 4, in list No. 1. It seeks to substitute 'tribe or community ' to bring it in conformity with the rest of the clause. I beg to move:

In the amendment proposed by me, printed as No. 3, after part (I)(i) insert:

"(ia) in part (c) (ii) for 'community 'substitute 'tribe or community ' ; ".

**Mr. Deputy Speaker** : Amendment moved : In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (I)(i) insert :

" (ia) in part (c)(ii) for ' community ' substitute ' tribe or community ' ; ".

Dr. Ambedkar has already moved amendment No. 3 during the last session . That amendment and this one are before the House. Has any other hon. Member got amendments relating to the same subject ?— to the same subject, and not to clause 2 as a whole ?

**Shri J. R. Kapoor** (Uttar Pradesh) : Is it your intention, Sir, that if we have amendments to the amendments No. 3 and 4 of Dr. Ambedkar, we may move them ?

**Mr. Deputy Speaker** : Yes.

**Shri J. R. Kapoor**: So, with your permission, I should like first to move No. 95 of list No. 2. As a matter of fact, I had in my original notice given it as an amendment to amendment No. 3 of Dr. Ambedkar, but here it has been given as an independent amendment. That has been done by the office for the sake of facility probably. I am mentioning this only to avoid any objection from any quarter that No. 95 is not an amendment to the amendment of Dr. Ambedkar. I beg to move :

(i) For clause 2, substitute :

" 2. *Application of Code*.—This Code applies to all the citizens of India that

is Bharat, who after attaining the age of majority declare in writing that they shall be governed by this Code, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration." Then, in the same context, I would ask your permission to move amendment No. 97 in list No. 2, I beg to move :

(ii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (2), insert :

" (3) After sub-clause (3), the following new sub-clause be inserted, namely:—

' (4) This code or any part or parts thereof also apply to any other person who after attaining the age of majority declares in writing that he shall be governed by this Code, or any part or parts thereof as the case may be, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, have made such a declaration.' "

I also beg to move:

(iii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (I)(ii) of the proposed amendment to sub-clause (1) of clause 2, after " Sikh religion " add :

" or to any other religion or faith except Muslim, Christian, Parsi, or Jew religion."

(iv) After part (c) (ii) of sub-clause (1) of clause 2, insert :

" (iii) to any orphan or abandoned child brought up by the State."

**Shri B. K. P. Sinha** (Bihar) : May I suggest that instead of hon. Members reading all the amendments, they may only refer to their numbers. Because the amendments sometimes tantamount to a speech.

**Mr. Deputy Speaker** : It is no good our closing our eyes. There is a limit to this kind of suggestion. The amendments must be read ; we cannot rush through like this. Certainly I will allow all reasonable debate on the matter. I myself am not able to understand at times. Except on formal matters, when I shall ask hon. Members not to read the amendments, the amendments must be read.

**Shri J. R. Kapoor**: Thank you for your direction. Sir.

**Mr. Deputy Speaker**: That does not mean that the hon. Member can be dilatory.

**Shri J. R. Kapoor:** If the suggestion of my hon. friend were to be pursued to its logical length, we can even say that all the amendments standing in the name of an hon. Member are moved.

**Mr. Deputy Speaker:** We need not dilate upon that.

**Shri J. R. Kapoor:** I beg to move: (v) for sub-clause (3) of clause 2, substitute:

" (3) The expression ' Hindu ' wherever it occurs in this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless governed, or declares his consent in the manner prescribed by the Central government in this behalf to be governed, by the provisions of this Code." Then I come to amendment No. 272 of List 5.

**Mr. Deputy Speaker :** I think we might take up sub-clause by subclause. There are a number of sub-clauses in clauses 2. Unless any amendment can be brought under anyone of these sub-clauses we shall carry on with sub-clause (1). Then we shall take up the other subclauses. What is the Hon. Minister's reaction to this suggestion ?

**Dr. Ambedkar :** I am quite agreeable to that.

**Shri J. R. Kapoor :** May I submit that all the amendments might be allowed to be moved. We shall follow the procedure we adopted in the Constituent Assembly from tomorrow onwards.

**Mr. Deputy Speaker:** Today, I leave it to hon. Members to move whatever amendments they like. Tomorrow I shall have them consolidated under each sub-clause.

**Shri J. R. Kapoor :** I beg to move :

(vi) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, for part (2) substitute : " (2) for sub-clause (4) the following be substituted, namely :— ' (4) This Code or any Part or Parts thereof also apply to any other person who declares his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code or any part or parts thereof, as the case may be.' " (vii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

" (1A) in the proviso to sub-clause (2), insert at the end ' unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also.' "

(viii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(IA) in sub-clause (3) for the words ' the provisions ' the words ' any or more of the provisions ' be substituted." Or, in the alternative, if that be not acceptable to the House : (ix) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert :

"(IA) in sub-clause (3) insert at the end ' in respect of any or more of the

matters dealt with herein '."

**Mr. Deputy Speaker:** " Any one or more " is the usual expression. Is it not?

**Shri J. R. Kapoor:** I agree. Sir, to your suggestion. This exhausts my amendments to amendment No. 3 of Dr. Ambedkar.

There is one amendment, which I seek to move to my own previous amendment moved during the last session. I beg to move :

(x) In the amendment proposed by me, printed as No. 93, to the proposed clause 2, add the proviso :

" Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before 'the marriage, or both the husband and wife after the marriage, make such a declaration."

**Mr. Deputy Speaker:** A similar amendment has already been moved.

**Shri J. R. Kapoor:** This is an amendment to my own previous amendment. Then I wish to move my amendment No. 125. I beg to move : (xi) To clause 2, add the proviso :

" Provided that the provisions of parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisions, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government:

Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

There is only one more amendment, notice of which I have given this morning. It is a small amendment and with your permission I shall move it. I beg to Move :

(xii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (1) (ii), insert: " (iii) insert a new part (e) as follows: ' (e) to a convert to any religion or faith after the commencement of this Code'. "

**Mr. Deputy Speaker :** That is, if on the date of the commencement of this Code there is a Hindu, even if he changes his religion after the commencement of this Code it is this Code which will apply to him notwithstanding the change of religion. Is that the intention ?

**Shri J. R. Kapoor :** The intention is that if any person changes his faith after the commencement of this Code, then this Code shall apply to him. Suppose a Hindu changes his faith after the commencement of this Code and becomes a Muslim, even then it will not be open to him to have two, three or four wives at a time as he likes. That is, it should not be open to anyone to convert himself into a Muslim in order only to get over the provisions of this Code and

to have more than one wife. There are other implications also of my amendment but I have explained this one important implication.

**Shri Naziruddin Ahmad** : One wife will be sufficiently difficult ; two wives would be out of the question !

**Mr. Deputy Speaker**: Today I will allow all amendments to be moved to clause 2— both to the original clause and to the amendments of the Hon. Minister. I shall try to put them together tomorrow.

**Pandit Thakur Das Bhargava** (Punjab): May I know if any of the amendments which my hon. friend has just now moved were moved in the February session also? I think one of the amendments moved now was debated in the House—the amendment relating to a person declaring that he will be bound by the Code. I think he also made a speech on that. I do not know if that amendment has not already been moved and also debated upon.

**Shri J. R. Kapoor** : I may assure my hon. friend that I have taken jolly good care to see that I do not repeat any one of my previous amendments. Of course the subject matter of some of these amendments was incorporated in some form or another in a previous amendment that I have moved. But finding that, that particular amendment would not well suit the purpose, and in order to meet the objection raised then by my hon. friend Pandit Thakur Das Bhargava, I have further amended my previous amendment so as to bring it perfectly within the four comers of the Code and also to make it otherwise acceptable.

**Shri Syamnandan Sahaya** : I beg to move : To clause 2, add the proviso :  
" Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

**Sardar B. S. Man** (Punjab) : I beg to move : In clause 2, omit " Sikh ", wherever it occurs.

**Mr. Deputy Speaker**: The hon. member's desire, I take it, is that it ought not be apply to Sikhs.

**Sardar B. S. Man**: Yes.

**Mr. Deputy Speaker**: At each stage let us know what the scope of the amendment is?

**Pandit Thakur Das Bhargava**: Such an amendment has already been moved. The subject matter of amendment No. 236 is the same as Sardar Hukarn Singh's amendment.

**Mr. Deputy Speaker** : Let us forget what all has been done. Let us start. The intention of the House is to proceed clause by clause and have a connected picture—and so there is no harm if there is a repetition or if it is moved once again so as to focus attention.

**Pandit Thakur Das Bhargava** : In that case in the February session I moved an amendment and also made a speech on it. Is it necessary for me to

move it again ?

**Mr. Deputy Speaker:** It is not necessary.

**Dr. Ambedkar:** No, we know them.

**Shri R. K. Chaudhari;** May I draw your attention to amendment No, 123 ? This stands in the name of Shri Jhunhunwala who was here just now. But he asked me to bring this to your notice because he has gone outside the House owing to an urgent call. So he will come and move it.

**Mr. Deputy Speaker:** Let him come. After he comes he can move it.

**Shrimati Renuka Ray:** You were kind enough to say this morning that amendments where the subject matter is the same should be moved together. I want to ask whether you are allowing such amendments which were moved and on which speeches were made for three days, to be moved once again.

**Mr. Deputy Speaker:** They are pending.

**Shrimati Renuka Ray:** Certain amendments were moved and speeches made on them in the February session for three or four days. I want to know whether those are to be repeated now.

**Mr. Deputy Speaker:** What I propose to do is this. If any particular Member who has already moved his amendments wants to draw attention to them. He can indicate those amendments. I will make a note, the office also has a note. So that when the time comes I will put them. In so far as speeches have already been made I shall take care to see that there is no repetition of them. That is all that I can say.

**Shri Kamath :** But discussion on those amendments is not barred. Does it mean that all those amendments have been disposed of ?

**Mr. Deputy Speaker:** No. All the amendments are under discussion. No amendment has been disposed of.

**Shri Naziruddin Ahmad:** There is bound to be a certain amount of repetition because the House has meanwhile forgotten everything.

**Mr. Deputy Speaker:** The hon. Member knows how helpless I have become even if repetitions are made. Therefore, I suggest to myself that I should be a little more careful.

**Dr. Tek Chand (Punjab) :** I beg to move :

In part (a) sub-clause (1) of clause 2, for "members", substitute "followers".  
it is only a formal amendment and Dr. Ambedkar has agreed to accept this. The clause will then read : " and followers of the Brahmo, the Prarthana or the Arya Samaj ".

**Shri Bhatt (Bombay) :** I beg to move : For sub-clause (2) of clause 2, substitute:

" (2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu law or by any custom usage as part of that law in respect of any matters dealt with herein."

I have tabled no other amendment. But Dr. Ambedkar has used the word '

community ' with ' tribe ', will he not also put in the word ' clan ' with them ?

**Shri Barman** (West Bengal) : I beg to move : In the proviso to sub-clause (2) of clause 2, for " in respect of those matters " occurring at the end, substitute :

" in respect of matters which that person has not voluntarily chosen."

**Mr. Deputy Speaker** : The hon. member wants to give an option for him to come into the Hindu Code.

**Dr. Ambedkar** : Something like that.

**Shri Barman** : My intention is that a person who has voluntarily chosen to adopt the customs and usage of the Hindu law will not be allowed subsequently to say that he is not governed by them, but any third person may challenge or may prove that, that person was not governed by the Hindu Code and as such as regards the other matters the Code will not apply to him ; but as regards the matter which that person has himself voluntarily chosen, other persons would be precluded from challenging him.

**Mr. Deputy Speaker**: If he has already chosen, he will not be governed by the earlier portion of the Hindu Law. Perhaps the hon. Member wants to make it more clear.

**Shri Naziruddin Ahmad** : I beg to move :

(i) Omit part (b) of sub-clause (1) of clause 2.

(ii) In part (a) of sub-clause (1) of clause 2, for " Hindus, that is to say, all persons professing the Hindu religion " substitute " persons who are Hindus by religion ".

**Mr. Deputy Speaker**: That is the same thing as the Hon. Minister's amendment.

**Shri Naziruddin Ahmad**: There is a verbal change.

Then, I beg to move:

(iii) For part (b) of sub-clause (1) of clause 2, substitute:

" (b) to any person who is a Jaina by religion."

**Mr. Deputy Speaker**: It is an alternative amendment.

**Shri Naziruddin Ahmad**: Yes, Sir. Then, I beg to move:

(iv) In part (b) of sub-clause (1) of clause 2, for " Jaina or Sikh " substitute " or Jaina ".

**Mr. Deputy Speaker**: He wants to eliminate the Sikhs and Buddhists.

**Shri Naziruddin Ahmad** : Yes, Sir.

**Dr. Ambedkar**: There are verities of amendments.

**Shri Naziruddin Ahmad**: Some of them are alternatives.

**Dr. Ambedkar**: One amendment says that Buddhists and Sikhs should be omitted and another says Jains should be omitted.

**Mr. Deputy Speaker**: The hon. Member does not want the Jains to be omitted.

**Shri Naziruddin Ahmad**: ' Jains ' should stand. These are different variations of amendments, because hon. Members do not know which will be

acceptable to the House and particularly by the Hon. Minister.

**Mr. Deputy Speaker:** In all his amendments I find that the ' Jains ' is the common factor. He wants the others, that is, the Buddhists and Sikhs to be omitted.

**Shri Naziruddin Ahmad:** ' Jains ' I have not objected but the Sikhs have seriously objected.

**Mr. Deputy Speaker:** They are now governed by the Hindu Code.

**Shri Naziruddin Ahmad :** The whole question is whether this kind of Hindu law should be forced upon them ? They are Hindus no doubt, but should this kind of non-Hindu Law or rather un-Hindu Law be forced upon them? Then, I beg to move :

(v) In part (c)(i) of sub-clause (1) of clause 2, after " illegitimate " insert:

" who, if he has attained the age of eighteen years, is himself a Hindu and "

(vi) In part (c)(i) of sub-clause (1) of clause 2, after " parents are " insert " or have been ". (vii) In part (d) of sub-clause (1) of clause 2, at the end, add:

" subject to his rights and liabilities before his conversion."

**Mr. Deputy Speaker:** Let me pause here. Let us understand the implications of this. Shri Jaspat Roy Kapoor wants that notwithstanding change of religion by a Hindu after the passing of this Code, his rights and liabilities must be regulated by the Hindu Code. This amendment wants that if a person wants to change and become a convert, his rights and liabilities under his original religion ought not to be affected.

**Shri Naziruddin Ahmad:** If he is wrong, I am also equally wrong. We are in a vicious circle. That goes against the very idea of conversion. If a man is converted, he loses his past and begins a new chapter. As Mr. Kapoor has submitted his amendment, I am submitting this amendment. Both should be accepted or both should be rejected.

**Mr. Deputy Speaker:** Both the hon. Members want to avoid any change in their legal or civic rights as a result of conversion. Conversion ought not to affect their rights and liabilities with respect to property, succession, etc.

**Shri Naziruddin Ahmad:** There is an old Act which saves the past rights of Hindus converted to Christianity. That also reserves past rights and liabilities. (viii) Then, I beg to move : After sub-clause (1) of clause 2, insert :

"(1A) This Code shall not apply to the Scheduled Castes and Scheduled Tribes."

**Dr. M. M. Das (West Bengal) :** May I know what right the hon. Member has got to speak on behalf of the Scheduled Castes ?

**Shri Naziruddin Ahmad:** At present, I am only moving my amendments. I am not trying to explain them ; I am not now trying to convince my hon. Friend.

**Mr. Deputy Speaker :** There are some people who are more loyal to others than others themselves.

**Shri Naziruddin Ahmad:** I shall state my reasons. There are certain parts

of the Code which would be too much for them to assimilate. For example, they have very simple forms of marriage and divorce. You are making their life more complicated.

**Mr. Deputy Speaker :** The hon. Member forgets that his objection is to the whole Code. If it is said that they have got simpler forms of marriage and divorce and these forms need not be introduced, that is a matter for consideration. (The whole Code goes out as if they do not belong to the Hindu community.)

**Shri Naziruddin Ahmad :** My objection is to the whole Code as well as every part—singly as well as taken as a whole.

**Mr. Deputy Speaker:** The hon. Member forgets that there is a consolidating portion also ; by his amendment even those portions for which no exception could be taken would not apply. We are only preliminarily discussing what exactly the hon. Member wants.

**Shri Naziruddin Ahmad :** Then, I beg to move : (ix) Omit sub-clause (2) of clause 2.

**Mr. Deputy Speaker :** This is the residuary amendment. This seems to be absolutely meaningless. What is the Code which should govern ? The Indian Succession Act ?

**Shri Naziruddin Ahmad :** There may be a man who may have a new religion. There is in Japan a religion known as Shintoism. If a person professing that religion comes to India, would you apply the Hindu Code or the Muslim Code? He should be governed by his own Code. The proviso says that if it is " proved " that another law applies to him, then the Hindu Code would not apply. Upon whom will the onus lie? Suppose a man comes to India professing no religion. He has civil rights and liabilities. Would he be governed by the Hindu Code? Why not the Muslim Code or the Christian Code or the Sikh Code? Every man should be governed by his own Code. I shall explain this proviso at the proper time. This proviso also goes too far. It throws the onus upon a person coming into India who is not a Muslim, Christian, Parsi or Jew by religion, to prove his status. How can he prove that the Hindu Code does not apply ?

**Mr. Deputy Speaker :** He would be governed by private international law. Merely because he comes here, the Hindu Code would not apply.

**Shri Naziruddin Ahmad :** The point is that the onus is thrown upon a stranger who might find himself absolutely in hot waters.

**Shri J. R. Kapoor :** This Code applies to non-Hindus to whom some portions of the Hindu law or customs under the Hindu Law are applicable. This proviso does not apply to anybody to whom no part of the Hindu law is applicable.

**Shri Naziruddin Ahmad;** The whole applicability of the Code goes by the wording of the Act and not on its so called internal meaning.

**Shri J. R. Kapoor:** The wording is clear. The proviso says: " Provided that if

it is proved that such person.. " " Such person " means the person referred to in sub-clause 2 and not a person coming from America or England.

**Shri Naziruddin Ahmad :** I beg to move: (x) Omit sub-clause (3) of clause 2. To me, this sub-clause is to beg the question. It says:

" The expression ' Hindu ' in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code." This is the very question we have to clarify. To whom does this Code apply? We say, if the Hindu Code is applicable to any one, he is bound by it. The question is to whom, apart from the Hindus, this Code should apply, it is begging the question to say that the expression ' Hindu ' applies to whom this Hindu Code applies. We shall have to clarify the matters. I do not claim infallibility. But, I have felt some difficulty. Then, I beg to move: (xi) Omit sub-clause (4) of clause 2.

**Dr. Ambedkar:** That is also my amendment.

**Shri Naziruddin Ahmad:** I also beg to Move : (xii) After sub-clause (4) of clause 2, insert:

" (5) Notwithstanding anything in this section, this Code shall apply only to such areas or to such persons or classes of persons in any State and from such time or by such stages as the State legislature may from time to time by Act provide."

**Mr. Deputy Speaker:** So far as this amendment is concerned, we shall have to consider whether this is the proper place where this amendment should be considered, or it should be.....

**Dr. Ambedkar:** It should come under clause 1.

**Shri Naziruddin Ahmad:** If you think that it will be properly considered along with clause 1. . . .

**Mr. Deputy Speaker :** This amendment stands over and will be taken up when we come to clause 1.

**Shri Jhunjunwala (Bihar) :** I beg to move : To clause 2, add the proviso :

" Provided however, that notwithstanding anything contained in the above clauses this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

I have moved an amendment where I had placed the burden on the persons to get themselves registered who want to be governed, and if that is not accepted, here I have placed it on those who do not want to be governed by this Code.

**Shri Bhatt :** I beg to move :

In sub-clause (3) of clause 2, after " nevertheless governed ", insert " or desire to be governed ".

**Mr. Deputy Speaker:** I shall formally place the amendments before the

House. So far as the amendments to clause 2 that were moved last time are concerned, they are already before the House. Hereafter all amendments must be moved at the beginning of the discussion, because if they continue to be moved when the discussion is in progress, hon. Members who have already taken part in the discussion may not be able to take part and speak on those new amendments. It is not a technical objection. These may be amendments of substance and hon. Members who have already spoken with reference to other amendments earlier, may not be sole to take part in the discussion on these new amendments. But in the present case, if there are any such hon. Members I shall consider and give them also a chance, if necessary....

**Dr. Ambedkar:** A small chance.

**Mr. Deputy Speaker:** A small chance. But they may not repeat what they had already stated. Barring that, in future, my request to hon. Members is that all the amendments may be moved when a particular clause or sub-clause is begun. Otherwise we will have to go on repeating the process, allowing the Members to move amendments, and going over the whole matter once again.

I have already placed before the House the amendment moved by the Hon. Dr. Ambedkar today. I will now place before the House the other amendments moved today.

Amendments moved:

(1) In the amendment proposed by Shri J. R. Kapoor, printed as No. 93, to the proposed clause 2, add the proviso:

" Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

(2) for clause 2, substitute :

" 2. *Application of Code.*—This Code applies to all the citizens of India that is Bharat, who after attaining the age of majority declare in writing that they shall be governed by this Code, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

(3) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (l)(ii), insert: " (iii) insert a new part (e) as follows:

' (e) to a convert to any religion or faith after the commencement of this Code '."

(4) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (I)(ii) of the proposed amendment to subclause (1) of clause 2, after " Sikh religion " add :

" or to any other religion or faith except Muslim, Christian, Parsi or Jew religion."

(5) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

" (1A) in the proviso to sub-clause (2), insert at the end ' unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also ' . "

(6) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

" (1A) in sub-clause (3) for the words ' the provisions ' the words ' any or more of the provisions ' be substituted." (7) in the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(IA) in sub-clause (3) insert at the end ' in respect of any or more of the matters dealt with herein '." (8) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, for part (2).substitute : " (2) for sub-clause (4), the following be substituted, namely :—

' (4) This Code or any Part or Parts thereof also apply to any other person who declares his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code or any part or parts thereof, as the case may be ' . "

(9) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (2), insert:

" (3) After sub-clause (3), the following new sub-clause be inserted, namely:—

' (4) This code or any part or parts thereof also apply to any other person who after attaining the age of majority declares in writing that he shall be governed by this Code, or any part or parts thereof as the case may be, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, have made such a declaration ' . " (10) In part (a) of sub-clause (1) of clause 2, for "Hindus, that is to say, all persons professing the Hindu religion " substitute " persons who are Hindus by religion " .

(II) In part (a) of sub-clause (1) of clause 2, for "members", substitute " followers".

(12) Omit part (b) of sub-clause (1) of clause 2.

(13) For part (b) of sub-clause (1) of clause 2, substitute : " (b) to any

person who is a Jaina by religion."

(14) In part (b) of sub-clause (1) of clause 2, for " Jaina or Sikh " substitute " or Jaina ".

(15) In clause 2, omit " Sikh ", wherever it occurs.

(16) In part (c)(i) of sub-clause (1) of clause 2, after " Illegitimate " insert:

" who, if he has attained the age of eighteen years, is himself a Hindu and."

(17) In part (c)(i) of sub-clause (1) of clause 2, after " parents are " insert " or have been ".

(18) After part (c)(ii) of sub-clause (1), of clause 2, insert : " (iii) to any orphan or abandoned child brought up by the State."

(19) In part (d) of sub-clause (1) of clause 2, at the end, add : " subject to ,his rights and liabilities before his conversion."

(20) After sub-clause (1) of clause 2, insert :

" (1A) This code shall not apply to the Scheduled Castes and Scheduled Tribes."

(21) Omit sub-clause (2) of clause 2.

(22) for sub-clause (2) of clause 2, substitute :

" (2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu Law or by any custom or usage as part of that law in respect of any matters dealt with herein."

(23) In the proviso to sub-clause (2) of clause 2, for " in respect of those matters " occurring at the end, substitute :

" In respect of matters which that person has not voluntarily chosen."

(24) Omit sub-clause (3) of clause 2.

(25) for sub-clause (3) of clause 2, substitute :

" (3) The expression ' Hindu ' wherever it occurs in this Code shall be construed as it included a person who, though not a Hindu by religion, is nevertheless governed, or declares his consent in the manner prescribed by the Central Government in this behalf to be governed, by the provisions of this Code."

(26) In sub-clause (3) of clause 2, after " nevertheless governed ", insert " or desires to be governed ". (27) Omit sub-clause (4) of clause 2.

(28) To clause 2, add the proviso :

" Provided that the provisions of Parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisions, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.

Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the

marriage, make such a declaration."

(29) To clause 2, add the proviso :

" Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

(30) To clause 2, add the proviso :

" Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

The other amendments on the order paper against which an asterisk mark is placed and which were moved in the last session are also before the House. The clause as well as all the amendments will now be under discussion.

I will ordinarily only request hon. Members who have not taken part in the debate so far on clause to rise in their seats. If hon. Members who have already spoken want to state any fresh points arising now, I will consider the matter and allow an opportunity, if necessary, later on.

**Pandit Malaviya** (Uttar Pradesh) : Sir, will you allow anybody to move any further amendments to this clause during the course of the discussion ?

**Mr. Deputy Speaker:** What I find is, normally that is a very difficult affair. It is inconvenient if amendments are allowed to be moved at later stages, for once again hon. Members will have to apply their minds and ....

**Pandit Malaviya** : But in view of the special circumstances that exist now...

**Mr. Deputy Speaker:** Of course, during the course of the discussion, for the purpose of bringing about an agreement or some such thing, an amendment may be moved, and in that case the matter will always be considered. But with respect to new amendments I suppose the House will agree that for the reason that they will throw open the discussion once again, they should not be allowed.

**Khawaja Inait Ullah** (Bihar) : Would not an amendment that goes against the Constitution be out of order ?

**Mr. Deputy Speaker** : The hon. Member may refer me to the points that are considered as out of order or beyond the scope of the House at the time the matter arises.

**Shri M. Naik** (Orissa): If an amendment moved stands in the names of two or more Members, will that amendment be taken as having been moved by only one Member or by all the Members who have given notice of it?

**Mr. Deputy Speaker:** I shall take it that all of them have moved it.

**Shri M. Naik :** What happens if the hon. Member who moved it remains absent now ?

**Mr. Deputy Speaker :** I shall adopt the safer procedure. It is true that more than one Member has given notice of an amendment, and if he is not in his seat, it is open to any other of the hon. Members to move it. The question is, if all the Members are in their seats, whether all of them are to be taken to have moved it. By way of abundant caution we may say that all of them have moved it so that ultimately when there is any question of withdrawing that amendment and the Member who moved it is not in his seat, any of the other Members can withdraw it.

**Shri R. K. Chaudhuri:** If I want to oppose any of the new amendments now moved when can I do so?

**Mr. Deputy Speaker:** Whenever he rises and is called upon to speak. He is entitled to speak on all the amendments. (*An hon. Member: Of one category ?*) We have finished all categories. So far as clause 2 is concerned, I have allowed hon. Members to move all the amendments. Tomorrow I shall try to group them for purposes of convenience according to their substance. The clause may be discussed as also all the amendments and amendments to amendments.

**Shri J. R. Kapoor:** You may direct the office to circulate to us a consolidated list of all the amendments moved today as also on the previous occasion, so that we may have in a simplified form all the amendments for ready reference.

**Mr. Deputy Speaker:** Though there are various lists of amendments, what is done is that they are put consecutively and, therefore, no further arrangement is necessary. As regards circulating the amendments moved today, I thought hon. Members would have noted them as I have done.

**Dr. Ambedkar:** I have also noted them.

**Shri J. R. Kapoor:** Amendments to the same part of the clause may be at different places and for the sake of convenience it is better they are put in one place.

**Mr. Deputy Speaker:** I shall ask the office to circulate a list containing the numbers of the amendments moved instead of once again repeating the amendments.

**Shri J. R. Kapoor:** It should be sub-clause by sub-clause.

**Mr. Deputy Speaker:** Hon. Members have left their homes far away and come over here for parliamentary work. I do not believe the office should do it. Hon. Members should do it. Hon. Members may take one view and the office may take another view and does the hon. Member also want the Secretary to speak on his behalf in this matter ?

As regards Pandit Malaviya's amendment I shall allow it as an exception. With respect to other matters from tomorrow I would insist as a rule that I must have a copy of the amendment as also the Law Minister. Today perhaps

hon. Members may not have had sufficient time to think about their amendments. Pandit Malviya may read out his amendment so that we may note it down.

**Pandit Malviya** : I beg to move : to clause 2, add the proviso :

" Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to anyone unless a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not be governed by this Act and the same shall then not apply to him. "

**Shrimati Renuka Ray**: Sir, there are two points which I want to raise. It is a dilatory motion. The hon. Speaker has given a ruling during the last session....

**Mr. Deputy Speaker**: Hon. Members ought not to start off straightway, unless I call them. It may be a valid point.....

**Shrimati Renuka Ray**: It is a point of order. Mr. Deputy Speaker: May be. The hon. Member should first stand up in her seat and I must call her.

**Dr. Ambedkar**: It might come under clause I. Pandit Malviya: It is a matter of application and not a matter of extent.

**Mr. Deputy Speaker**: Let it remain here as it is.

**Shrimati Renuka Ray**: Sir, there are two points which I want to raise. First of all this amendment which has just been dictated to this Parliament—a procedure which we have never known before—is of a dilatory character...

**Pandit Malviya**: Sir, I object to the word dilatory.

**Shrimati Renuka Ray**: This amendment is of a dilatory nature and the Speaker has given a ruling last time, if you will remember, on this. Secondly, I would like to know whether this procedure of dictating amendments to the House, while the Parliament waits is going to be a precedent, which is going to be followed hereafter.

**Mr. Deputy Speaker**: The hon. Member too well knows that so far as dilatory motions are concerned, it is open to the House to discuss the amendments moved and throw them out, if the House is not inclined to accept them. I am prepared to adopt the advice of the hon. lady Member. I have not considered whether it is appropriate or relevant or irrelevant. I will take time to do so and if at any time before put it to the House. I find it is best to say that it is not relevant and therefore does not arise. I will do so. I will reserve my judgement so far as that is concerned.

As regards dictation, we have been accustomed to taking small sentences but I never expected it to be a long sentence and therefore I submitted myself to his dictation. Let us now go on. Let me place this before the House. Amendment moved: To clause 2, add the proviso :

" Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to any one unless a referendum thereupon

has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not be governed by this Act and the same shall then not apply to him."

**Pandit Malaviya:** May I make a request? It is a very serious matter, which we are considering....

**Mr. Deputy Speaker:** The hon. member will have an opportunity...

**Pandit Malaviya:** I wanted to draw your attention to the fact that unless we are all careful enough to use language with a certain amount of restraint we are likely to waste the time of the House and waste our energy. I should like to take objection, with your permission, to the use of the word dilatoriness for this reason :one Member may have one view, another may have another view. But if we feel that a certain thing should be done and if we wish to say it, the task becomes rather difficult if it is said that we are dilatory. I think we should be careful in this matter.

**Mr. Deputy Speaker:** I have appealed to hon. members, the same appeal I will repeat: hon. Members ought not to be too sensitive. " Dilatory " is an absolutely parliamentary word. Hon. Members may be anxious to get through this measure. It is not merely throwing any slur on hon. Members—there are some dilatory motions and there are some motions of substance. Therefore, it is quite a parliamentary expression. But I will appeal to all sections of the House. (We are engaged in a very holy cause.) This is a question of Hindu Law and the questions before us relate to marriage and other things. Let us address ourselves with all seriousness to this problem. We can iron out the differences and not only create a meeting place here but also give a lead to the rest of the country which is the intention of Parliament to give so far as this matter is concerned. Therefore, I hope the best of cheer will prevail here and with good humour we will get into the clauses. Though apparently any particular amendment may be unpalatable at the beginning, let us hear and reserve our judgement. That is my humble appeal to all sections in the House. No heat ought to be allowed to enter into this controversy. Let us keep our heads cool.,

**Shri R. K. Chaudhuri :** May I ask your advice. Sir. ....

**Dr. Ambedkar :** Why do you seek advice so often ?

**Shri R. K. Chaudhuri:** Just now you were pleased to address Shrimati Renuka Ray as madam. Has any Member got the right to be addressed by the Chair like that?

**Mr. Deputy Speaker:** I am sorry. I would like to be corrected. I do not like any Member to be addressed by any other Member in the first person. Similarly I will not address any Member directly. I shall try to be careful, but these things need not be pointed out to me. Now let us proceed. We have had too much of advice.

**The Minister of Home Affairs (Shri Rajagopalachari)** : I take it, Sir, that in the last amendment the question of order is open ?

**Mr. Deputy Speaker**: On all amendments, I merely placed that amendment for purposes of discussion. At any time it is open to the House or to me to consider it.

Now, I shall give preference to those gentlemen who have moved the largest number of amendments, and so on in that order, and ultimately to those who have not moved any amendment at all and who want to speak. Those hon. Members who have already spoken on this will get a chance, if necessary, in the end.

**Shri Rajagopalachari**: May I suggest one thing ? Those who promise and who believe they will make short speeches should be given preference.

**Hon. Members**: No, no.

**Shri Rajagopalachari**: And they may give way to others afterwards. If a member who wants to make a long speech is cut out by another we need not sympathise, but it is unfair that those who wish to speak for five minutes should be cut out by long speeches.

**Mr. Deputy Speaker**: The suggestion that is given is certainly good, but I feel one difficulty. In the matter of resolutions of general discussion on a particular Bill, I can ordinarily give preference to those who want to speak for a short time so that there may be a number of members speaking on it. But with respect to amendments, hon. Members who have not tabled any amendment at all may occupy the time of the House.

**Shri Rajagopalachari** : Without prejudice to other considerations I am suggesting it. Because, a closure may come at any time and those who may have something very important and brief may be cut out.

**Pandit Thakur Das Bhargava**: How will we know beforehand whether a Member will make a long speech or a short speech?

**Shri Rajagopalachari** : This is a battle of the long and the short.

**Mr. Deputy Speaker**: We should only have a general indication that all Members will make it, as short as possible.

**Khwaja Inait Ullah** : I wish to oppose some amendments which were moved in the last session.

**Mr. Deputy-Speaker**: Nobody prevents him.

**Shri Bharati (Madras)**: His difficulty seems to be in regard to what you, Sir, have stated that those who have moved amendments will get preference.

**Mr. Deputy Speaker** : I have not said that I am going to cut it short. All will have an opportunity unless and until the House itself puts a ban upon them. I only indicated that hon. Members who have moved a number of amendments must be given preference. Others may also speak.

**Dr. S. P. Mookerjee (West Bengal)** : *rose*—

**Mr. Deputy-Speaker**: Dr. Mookerjee—though he has not tabled any

amendments.

**Dr. S. P. Mookerjee** : I happen to be one of those Members. . .

**Shri Rajagopalachari** : It goes against all rules.

**Dr. S. P. Mookerjee** : .....who have not tabled any amendment, nor have I, Sir, spoken on this momentous measure at any time since the Bill was introduced.

**Shri Naziruddin Ahmad** : He was a Minister at the time.

**Dr. S. P. Mookerjee**: Sir, we have met here after about seven months to take up consideration of the Hindu Code Bill. Many things have happened during this period. If I may say so, it is a matter of some satisfaction that Government has kept its mind open and has volunteered to make amendments in order to meet criticisms which may be made either in this House or outside.

**Shri Gadgil**: Reasonable.

**Dr. S. P. Mookerjee**: I believe never in the history of our country has a measure given rise to so much criticism in support or against it.

**Shrimati Renuka Ray**: What about the abolition of *sati*?

**Mr. Deputy Speaker**: No, hon. Member need interrupt another hon. Member. I already said that it is likely to generate heat. Whatever is not to the taste of any hon. Member ought not to be imposed upon any other hon. Member.

**Dr. S. P. Mookerjee** : The clause we are discussing now is of a general character. It raises the question of the applicability of the entire Code and from that point of view I should like to make some general observations, which will be of a relevant character.

The question has arisen as to whether this Code should be made applicable to Hindus as such or to such other classes of persons including Sikhs, Jains and Buddhists as have been mentioned in the amendment moved by the Hon. Law Minister. The question has also been raised whether the Code should not apply to all citizens of India. I know that this matter was raised on the floor of this House in February last and I do not wish to dilate upon it very much but I would certainly say that as the Chapter in the Constitution dealing with the directive policy of the State indicates. Parliament under the new Constitution has really been called upon to pass a Code, which is to be applied to all citizens— an all India Civil Code. When this bill was started to be discussed, we were working under a different set of circumstances altogether. It is therefore a matter of regret that the new Government even after the Constitution has been passed should proceed with a measure of this description applicable only to one section of the community. It is said that we are a secular State. In fact we suffer very often from a new disease, which may be called ' secularities '. How far is it open to Parliament—1 am not raising any technical point—but how far is it desirable for Parliament to pass a law which will be applicable to only one section of the community? I know

what the reply of the law Minister is, because he dealt with this question in one of his previous speeches. He said that there was no difficulty in formulating an all India Civil Code if the country really wanted it. If that is the answer, then why not let us have such a Code? I doubt very much if some of the provisions which have been suggested in this Code can be proposed to be made applicable to other communities, in particular to Muslims. We are discussing the question of monogamy; I believe it is nobody's case that monogamy is good for Hindus alone or for Buddhists alone or for Sikhs alone. I believe those who are advocating monogamy honestly feel that this system is sound in principle and it should be made applicable to all—if not to all persons in this civilised world, at least to all citizens in India who are liable to be governed under laws passed by this Parliament. Now, why not have a separate Bill dealing only with monogamy and make it applicable to all citizens ? What is the objection thereto? The objection thereto may come from quarters to which the Law Minister pointed his finger, I believe Mr. Naziruddin Ahmad.

**Shri Naziruddin Ahmad :** I am sufficiently troubled with one wife. I do not want two.

**Dr. S. P. Mookerjee :** The law Minister has got his answer. In any case, if a bill dealing with monogamy is introduced...

**Pandit Thakur Das Bhargava:** A Bill to that effect has been introduced in this House by me.

**Dr. S. P. Mookerjee :** If such a Bill is introduced, at least the Law Minister will get support from Mr. Naziruddin Ahmad, but the real reason is that Government dare not touch the Muslim community,

**Shri Bharati :** Why ?

**Dr. S. P. Mookerjee :** You make a test.

**Shri Gadgil :** Wait and see.

**Dr. S. P. Mookerjee:** I am making a suggestion. Let the Law Minister declare that the Bill will be amended and the portion dealing with monogamy will be applied to Muslims.

**Shri Rajagopalachari:** Are we to make laws in order to test courage ?

**Dr. S. P. Mookerjee :** Laws are sometimes made to test the sincerity of individuals and Government and therefore the sincerity and the partiality of the Government including the Home Minister are very much in question today.

**Shri Bharati :** Not at all.

**Dr. Ambedkar :** No, no.

**Dr. S. P. Mookerjee:** I am not going to tread on this question because I know the weaknesses of the promoters of the Bill. They dare not touch the Muslim community. There will be so much opposition coming not from men like Mr. Naziruddin Ahmad but from many others throughout India that Government will not dare to proceed with it. But of course you can proceed

with the Hindu community in any way you like and whatever the consequences may be.

**Shri Rajagopalachari** : Because we are the community.

**Dr. S. P. Mookerjee**: My appeal to the House and to the Government would be on a somewhat different basis. I do not wish to make my speech very controversial.

**Shri Kamath** : Why not ? Make it as controversial as you can.

**Dr. S. P. Mookerjee**: Because I want to create that atmosphere where matters affecting social reform can be discussed in a method of give and take. It is not a Press Bill which the Law Minister is sponsoring on behalf of the Home Minister. We do not want the Police to stand outside this Parliament to help the smooth passage of a Bill dealing with social reform. That does not really help anybody. Any Bill whose object is to introduce social reform must have the support of the vast majority of the people of the country. I see the Home Minister rising.

**Shri Rajagopalachari** : I am not interrupting. I am only helping him. My interruption has given a twist to the hon. Member's argument. I was only objecting to the particular argument. I may be entirely in agreement if he proceeds on the other basis.

**An Hon. Member** : So, you are a supporter !

**Dr. S. P. Mookerjee** : As the time of retirement from his office is drawing nearer and nearer sense also is dawning upon the Home Minister quicker and quicker. In any case, if we want to have social reforms in this country, we would like to carry as large sections of the people with us as possible.

I do not share this view that parliament has no right to deal with matters of social reform. I know the sacredness of our ancient texts— *Vedas*, *Smritis* and *Smtis*. But historically there were commentators to interpret the great theories which are propounded by the original law makers in days of yore. Gradually, the commentators also disappeared and what we have witnessed during the last 150 years is that in many matters affecting social reform Judges including European Judges sitting in distant London and legislators have from time to time come forward and made alterations in the social structure of the country. So it is rather too late in the day for any one of us to say that Parliament should not now have the right to pass legislation which may interfere with the rights and privileges which may be enjoyed by the people of this country under the existing law.

**Pandit Maitra** : Not this Parliament as constituted at present.

**Dr. S. P. Mookerjee**: So far as the right of this Parliament is concerned, naturally it is a very delicate matter. For me being a Member of this body it is rather difficult to challenge its jurisdiction, but of course so far as its right to present the will of the people goes, that is a matter which will be decided in the next few months and the people themselves will give their verdict. It is no use either for us sitting on this side or Members of Government sitting on the

other side claiming for this Parliament things which may not be actually, honestly and legitimately claimed for this body. But my point is this that today there is a volume of opinion—a strong body of opinion, against some or many of the fundamental features of this Bill. I beg of hon. Members who are supporting this Bill to appreciate the depth of these criticisms. There may be some features in this Bill with which I am in agreement, but I am trying to look at this measure from the point of view of those who are opposing it either in whole or in part. Just as we may appreciate the depth of the feelings of those who are supporting this measure, so also the depth of feelings of those who are opposing it must be appreciated. How to find a solution? From the papers we find that for strategic reasons it has been decided to omit the consideration of some portions of this Bill.

**Dr. Ambedkar:** Strategic reasons?

**Dr. S. P. Mookerjee :** A sort of toss is supposed to have been taken. On the one side are marriage and divorce and on the other side is property and somehow marriage and divorce have won the day, and property has been relegated to the background for the time being.

**An Hon. Member:** Property has won the day.

**Dr. S. P. Mookerjee :** Is it possible for us on the consideration of the amendments which are now before the House under clause 2 to devise some procedure whereby it may be left open to those who desire to come under the Code to take the fullest advantage of its provisions, and at the same time give freedom to those who do not believe in the sanctity or legality or justice of the provisions to continue to be governed by existing Hindu Law ?

**Shri S. Bharati :** That is uniformity.

**Dr. P. Mookerjee :** That is a proposal which I am making in a perfectly relevant manner on the basis of the various amendments which you have ordered to be placed before the House for consideration.

I have been told by some friends that we are liable to criticism for our backwardness in many foreign countries. During the last few days I have been told that some people have come and said that in China they are watching when the Hindu Code Bill will be passed!

**Pandit Maitra :** In Honolulu too !

**Dr. S. P. Mookerjee ;** In America some people are supposed to be watching as regards the progressive nature of the Indian people in relation to their attitude towards the Hindu Code.

**Shri Gadgil:** Old *rishis* are watching from Heaven also.

**Dr. S. P. Mookerjee :** That I consider to be an entirely irrelevant consideration. Let us look at the American laws. I was trying to get some information with regard to the American laws. I find that in 26 different States in America they do not allow marriage between Americans and Negroes and even they go to the length of indicating the fraction of African blood which will negative any marriage between an American and Negro. In some States

marriage between an American and Chinese is prohibited, or a marriage between an American and a Mongolian. In practically all the States there are different marriage laws. Somebody interrupted me just now—what about uniformity? I suppose people of the United States of America are getting on quite merrily and quite well without having complete uniformity of all marriage laws. So uniformity is not the last word on the subject. Uniformity suggests stagnation, deadness...

**Shrimati Renuka Ray:** *rose—*

**Dr. S. P. Mookerjee :** ..... and I suppose even Mrs. Renuka Ray has not reached that stage.

**Shrimati Renuka Ray :** Should we follow America ?

**Dr. S. P. Mookerjee:** I am not saying that you should follow America. I would suggest that we should follow the lead given by our own country and that is the lead which Mrs. Ray should follow and which she has not followed as yet.

That is so with regard to America. Now take again the Roman Catholics. According to their strict law, according to their religion, divorce is not allowed. But in almost all countries they have passed civil laws which allow Roman Catholics to adopt divorce if necessary. But they have not touched their religion. They have allowed that to remain separate, but those among the Roman Catholics who desire to be governed in accordance with the civil laws, it is open to them to do so. Well, Dr. Ambedkar is nodding his head. It is difficult to know whether it is in approval or disapproval. In any event, he can explain later on—I am open to correction. It is very difficult to get these laws. But whatever books are available in the Parliament Library I was trying to go through them and I find that a clear distinction is made between the two systems.

Now we are confining ourselves for the present to marriage and divorce. What is it that is worrying the so-called progressives in this country, including progressive ladies ?

**Shri Kamath :** In the House or outside ?

**Dr. S. P. Mookerjee:** They are anxious that there should be a provision for divorce and there should be provision for monogamy. These are the two things on which great stress has been laid. Now let us take divorce for the time being. You have got your laws passed by the Indian Legislature, which permit divorce. At one stage a Hindu could not get married under the civil law, unless he declared that he was not a Hindu. Even that has been changed. A Hindu may remain a Hindu and at the same time contract a marriage which will be according to his taste or that of the couple. Similarly, with regard to inter-caste marriage, you have already passed laws and made such inter-caste marriages permissible, without taking away the Hindu character of the persons involved. Even *sagotra* marriage which is considered to be very revolting by large sections of the people has been recognised by laws passed

by Parliament.

**Dr. Tek Chand** : By the previous Parliament.

**Dr. S. P. Mookerjee** : By the Legislative Assembly.

These are indications as to how the demand for a "progressive development—if I may say so—of marriage laws has been met by Legislatures of this country. This is a subject which is placed in our Constitution in the Concurrent List and I believe Bombay and Madras have passed laws on the subject. (*An Hon. Member: Mysore as well*). There are several States where provincial laws have been passed in some form or another. (*An Hon. Member : Not in North India*) making provisions which are consistent with the wishes of the people. Now the point is this. Why do you wish to make the new laws obligatory upon all Hindus ? You do not wish that the system of divorce should be taken advantage of or must be taken advantage of, by people against the will of the parties concerned. It is an enabling measure and that power is already in existence.

On the other hand, what is the blow that you are giving at the feelings of million of people ? Now you have kept this form of sacramental marriage on paper. You have changed its description from sacramental to " *dharmic* " in order to give it a little oriental and attractive colouring. Of course the substance has not changed. I would ask very seriously those Members of the House who are supporting this Bill : What is it that you are achieving by this proposal ?

So far as sacramental marriage goes, this is an ideology which lies deep-rooted in the minds of millions of people—educated, and uneducated, literate and illiterate—the indissoluble nature of Hindu marriage. That is a matter of religion : it is not a matter of mere body and flesh. Now that is a feeling which lies deep in the minds of millions of people and I have talked to many people not only in my own province but in venous parts of India. People who have not the remotest chance of taking advantage of any divorce law for various reasons are simply shocked at this idea and many people who are well-intentioned, who are reformers suggest that if there are Hindus in the country today who want to take advantage of the modern system of divorce or want to do away with the religious nature of Hindu marriage, there is enough opportunity given to them under the existing law. If, however, the law has to be revised in order to make them ultra-modern and completely up-to-date, let the law be revised for their benefit. But why do away with the fundamental and sacred nature of Hindu marriage? What is it that you gain thereby? I have not been able to get any satisfactory answer to this question. Because it is nobody's case that the new methods which are being laid down will be compulsorily adopted by all Hindus. Obviously that is nobody's case. Therefore, if option is given and if people take advantage of that option, naturally your case is won.

I was told that even in India, as India is today, there are nearly about 90 per

cent, among *Shudras* amongst whom some form or other of divorce or dissolution of marriage exists. Very well, then the answer is there. You have got your Hindu Law, which provides for the dissolution of marriage in castes and communities where it is wanted. You may say, well, why should about 10 or 15 per cent. of the Indian population stand against these changes ? It is not a question of anybody's standing against the changes. If you want to go ahead or go backwards— whatever it may be—you are welcome to do so. But why drag others who do not believe in you and also who believe in something which is perfectly morally justifiable and in accordance with the highest standards of human conduct ? I have not been able to get any answer to this fundamental question.

We are told very often that our system is backward. I have got with me many extracts from the writings of great Indians and great Western scholars who have admired at the way in which Hindu society has carried on its existence in spite of tremendous odds and difficulties. I am not for a moment saying that all is well with Hindu society. I know where the defects lie. But it is something amazing, something unprecedented that our religion or the great truths on which Hindus for generations past, for thousands of years, have lived, somehow have shown a degree of adaptability and vitality which is hardly to be witnessed anywhere else. What is the reason ? The reason is that whatever truths were propounded by the ancient sages or *rishis*, or commented upon by those who came after them, were not dogmatic in character. Just as the needs of the society changed, so also the laws were altered. In a huge country like India which is one politically today—and we would undoubtedly like to see that it grows politically, socially, culturally and economically as one solid nation—at the same time, we cannot forget that in this country dwell thousands, and thousands of people in various parts, in towns and in villages, men educated, uneducated, men with vision and with no vision and they have built up a structure of their own consistent with individual and social progress and welfare. Somehow that society has developed. Do you find any other country in this world where in spite of tremendous onslaughts the social structure has remained one ?

India passed through seven hundred years of Muslim rule. Now, many theories were propounded during that period which in the context of today's circumstances may appear to be rather conservative. But they were dictated by considerations for the preservation and consolidation of the society as such, and that is how those particular principles were propounded by the masters who were in no circumstance less qualified to speak on matters with which they dealt than any of us sitting in this Parliament today.

From time to time movements came into this country. Reference has been made to Brahma Samaj to Arya Samaj as soon as it appeared that the society was becoming stagnant, was becoming conservative, some outstanding personality raised his head in this land and drew upon the great sources, the

fountain head of Indian knowledge, the *Vedas* or the *Upanishads*, gave their own interpretation and thereby tried to check the growth of the evils of conservatism or the moral decay of the society. But what has happened today? The ideology for which the Brahmo Samaj stood in this country, say, about a hundred years ago has practically been absorbed by the Hindu society as you call the Hindu society today.

The other day we were discussing about Buddhism, a matter on which Dr. Ambedkar naturally would be the best authority to speak in view of his latest transformation to that religion. But in any case some friends from outside India came, I have something to do with the Maha Bodhi Society. I happen to be its President. (*An Hon. Member: Are you a Buddhist?*) Without being a Buddhist, I am a Hindu and yet I am its President, because I have liberality enough to admit the greatness of Buddhism and yet remain a Hindu. The point I was about to develop was this. There were friends who came from outside India and they asked with a tone of complaint. " Well, India was the land of birth of Buddha, but India killed Buddhism ". I do not wish to go into those controversial matters now. But one point comes out very prominently and that is that when Buddha started preaching his great doctrines India needed Buddha, not only to save the world but to save India. And Buddha succeeded in checking the growth of certain tendencies which were about to destroy the very life-blood of Hindu civilisation Buddha has been absorbed by the same Hindus as an *avatar*. Although there were people in India who fought with Buddhism—whether they were right or wrong is a matter into which I need not enter now—but gradually it was realised that Buddhism was a factor of growth on Indian soil and had to be absorbed in Indian culture.

**Shri Gadgil :** The same thing will happen to the Code.

**Dr. S. P. Mookerjee :** Far from it. That is a paradise that my friend is creating where he may dwell for ever.

So far as Buddhism is concerned it went and spread in other countries but the tenets of Buddhism were gradually absorbed in Hindu ideology. The reason why I am saying all this is to show that we should never tolerate any criticism from any quarter, especially from a foreign quarter when they say that Hindu civilisation or Hindu culture has been of a static nature or of a stagnant nature or of a decadent nature. There is something in our culture and civilisation which is of a dynamic character and which has lived from generation to generation. Even when India was a subject nation people were born in this country, men of our soil, who stood up for great ideals which gave a new lease of life under new and modern conditions to the eternal tenets of Hindu civilisation. This code is destroying that fountain-source. I shudder to think of the effect of clause 4. You read clause 4 of the Hindu Code. You are closing the door there. You are saying that except such manners or customs which might have been recognised in the body of this Code, everything else will be taboo from today. And my friend Mr. Gadgil says that this will be

another Code of a modern Buddha or Manu or something like that. (*An Hon. Member*: What a fall !) It is these manners and customs based upon the ancient ideology, which allowed the Hindu society to grow and prosper from time to time.

12 NOON

Today, this great Assembly—and all of us are honourable and learned men—is solemnly deciding that we are the fountain-head of Indian religion and Indian culture and whatever we decide to embody in this Code is final for the time being and nothing else will be allowed to be looked into by Judges and Courts. Does not the House know that even in 1951 after the attainment of Independence, our own Supreme Court had to draw from the original texts or their interpretations and give their verdict on cases where questions of Hindu law were under consideration, because they could not get any analogy from judicial decisions or text-books ? You are killing today the very fountain source of your religion which had given such a wide scope to generations of people to make it a living reality and you say that it is a forward measure : it is a backward measure ; it is a measure which does not help anybody at all , it only helps in dividing the country. I do not wish to ascribe any motive to anybody. Anyone who may be supporting it or proposing it may be acting with the highest motives. I am prepared to admit that but what I would like to say is this : Do not give compulsory effect to the provisions in respect of all people. (*An Hon. Member* ' . Where is the compulsory effect at all ?) Divorce is not compulsory but the breaking away of the sacramental ties of Hindu marriage will be compulsory and that is bad enough. Whether divorce comes or not is a different question altogether ; you are violently changing customs and convictions. Somebody said, when I was speaking earlier that south India was specially progressive and many of the laws which we are considering are already in existence there today. I say good luck to south India. Let south India proceed from progress to progress from divorce to divorce. I have absolutely no quarrel with south India, but why force it on others who do not want it. In fact I have got a letter with me. I received it only two days ago—it is a postcard and I do not know the gentleman who wrote it.

**Shri Gadgil** : From the Dead Letter Office ?

**Dr. S. P. Mookerjee** : It is not from the Dead Letter Office. I can make a present of it to Mr. Gadgil, if he likes. It is not a dead letter. This only shows how customs vary in this country. Here is this gentleman who writes from Nuzwid, Kistna district.

" The Bill as published on the Hindu Law contains a provision rendering the marriages between a girl and her maternal uncle void as being within the prohibited degree. The aforesaid custom is widely prevalent in Andhra and Tamil Nadu and even Brahmins consider maternal uncles of girls to be the most eligible and suitable bridegrooms for their girls. The prohibition is not

known perhaps to lawyers and to others. I am sure that the vast majority of our people are ignorant of it, in which case marriages celebrated in ignorance of this provision would operate as a severe hardship. I therefore request you to move an amendment....."

I do not know why they had selected me in particular and not written to Dr. Ambedkar—

"... saving the custom from the prohibition or fixing sufficient time to elapse before the chapter on marriage, can be brought into force."

This is just by the way, for those who were talking about the progressive nature of the people living in those territories. Naturally they have gone very far ahead. (*An hon. Member*: Is it true ?) I do not know whether the letter came from the Dead Letter Office but my friends from south India can tell me whether it is genuine (*Interruption*). I shall refer the writer to Mr. Bharati in my reply. The point which I am developing is this.

**Shri J. R. Kapoor**: It is not a progressive State.

**Dr. S. P. Mookerjee** : Those who may follow him may consider it absolutely progressive. It is only a point of view. I am not challenging the wisdom or unwisdom of any State. It might have been followed by lakhs and millions of people in this vast country. Naturally customs might have developed in a particular manner. My proposal boils down to this. You do not make this Code applicable to all—I am talking of marriage and divorce for the time being—but leave it open to those who will be married in future to make a declaration that they would like to be governed by these provisions and not be governed by the consequences of *dharmic* marriage ; you leave it open to them to do so. (*An hon. Member* : What about past marriages ?) That covers the cases of those who come in future. We are not legislating. I suppose for the purpose of helping the dissolution of marriage of the existing Members of Parliament. We are looking to the future ; we are thinking of handing over something to the future generation, whereby they can live in peace and with greater comfort. But supposing you want to apply it to those who are already married....

**Dr. Ambedkar** : It does not apply to those who are already married.

**Dr. S. P. Mookerjee**: There also you can make a provision. Supposing you want to apply it to all who are already married, there I will give a solution. You leave it open to anybody, say, within a period of one or two years to register his decision whether he would like to be governed by this Code to opt for it, if you can use that language. (*An hon. Member* : Why not everywhere ?) Well, ' everywhere ' I do not approve for this reason that you are deciding something for others for which you have no right today. You are passing a law whereby you are saying that the *dharmic* form of marriage will continue as now without any modification or alteration and the other form of marriage also is open to people who would like to take advantage of it. Let the people in future make their choice. There is no compulsion and for existing people you may give a time-limit or you may not give a time-limit. You can say that if any particular

party desires to be governed by the provisions of this Code, such persons may make a declaration before the Registrar or Registrar-General or Director General or whoever he may be and get the relief as is provided for in the Code. I ask in all seriousness what is it that you lose thereby ?

**Pandit Kunzru** (Uttar Pradesh) : What do we gain thereby ?

**Dr. S. P. Mookerjee** : What you gain thereby is that you do not break the unity of the country.

**Pandit Kunzru** : This Act when passed will be permissive. It does not compel any couple to take advantage of the provisions of divorce. "It is perpetually open to a couple to say whether they are to be governed by that provision or not.

**Dr. S. P. Mookerjee** : That is a point of view which may be urged with some emphasis. Here the difference is this : that you destroy the indissoluble nature of Hindu marriage which is regarded as solemn and sacred by millions of people. Pandit Kunzru may not agree and many people in this House may not. I am not quarrelling with those people who believe that marriage is bilateral arrangement, that it is nothing but a matter of contract; I have nothing to say against them if there are people who hold that view. Let them hold it, but there are those who hold the contrary view, who genuinely and sincerely believe that this system which has been in vogue for thousands of years is something sacred, something deep-rooted in their traditions and religion. What right have you to sit in this House and say that you want by one stroke of the pen to take this great right away? That is my answer to Pandit Kunzru. (*Shri Bharati*: Monogamy.) I am coming to it. *Shri Bharati* need not be anxious I hope he is agreeing with me as regards divorce and that is why he wants me to go to monogamy. That is my line of approach. Believe me, rightly or wrongly, this country has been divided tremendously on this Hindu Code Bill. I do not wish that that should be so. I want that we should go on progressing and making reforms in our social structure. But, we will do it in such a way that we can carry the bulk of the people with us, not carry them by force in this House or carry them by threads of sweeping agitation outside, but carry them by appealing to their logic and to their conviction. When I discussed this matter with representatives of the orthodox school of view.....

**Dr. Ambedkar** : That is Karapatriji.

**Dr. S. P. Mookerjee** : No ; I have not met him recently.

**Pandit Maitra** : What is the harm if he is consulted ?

**Dr. Ambedkar** : No harm. I invited him and he expressed a desire to come. Afterwards, he refused to come. I have not shunned him.

**Dr. S. P. Mookerjee**: I have not discussed this matter with Karapatriji recently. I shall not be sorry to discuss it with him; but, I have not discussed.

**Dr. Ambedkar** : In fact ; I invited him to come and discuss ; but he has not come.

**Dr. S. P. Mookerjee** : I have discussed this matter with many people who

represent his point of view and others who are not orthodox. Somehow, the country is divided today. How to proceed in the matter? As I said, it is not a Press law, that something is in danger and so you must go and pass the Press law somehow and operate it. This is not an amendment of the Constitution. It is not a political matter. In fact, we may differ on matters of politics. But, there should be a fundamental agreement with regard to the need for introducing reforms into our great country, which will make our civilisation more progressive and more advanced. That should be our common ground of approach. Those who are following the existing practices, those who are abiding by the provisions of the existing laws are not retrograde. The tragedy is that many of the supporters of the Bill, who have been carried away by their notions of so-called progress and advance, in their exuberance think that what they think is the last word on the subject, that they represent progress and the others are retrograde. That is very unfortunate. (*An Hon. Member: Lipstick*). I am not talking about lipstick at all; I have talked about progress. We should see the other man's point of view, the point of view of man who believes in the existing ideology, unless it can be pointed out that something is happening in the society, which is absolutely rotten, immoral, backward. If that could be pointed out. I am at one with Dr. Ambedkar and those who want to introduce reforms. But, if it is a mere difference of opinion, a mere difference in outlook, and you get whatever you want for those who share your point of view, why then do you force your opinions on millions of others, who do not share your view? That is a point of view which I would very strongly urge before the Law Minister and Government. If I had given you a formula, which indicated an abandonment of the provisions of the Code for those who believe in it, you can blame me. But, I wish you godspeed ; go ahead ; do whatever you like for those people who believe in the ideology which you are preaching here. But in respect of others who and whose forefathers had proceeded in accordance with the old traditions and who are no less patriotic Indians than any one who is sponsoring this bill, why do you force your options on them?

Talking of divorce has the law of divorce solved all social problems in countries where the system of divorce is now in existence?

**Shri Himatsingka** (West Bengal) : Created more.

**Dr. S. P. Mookerjee** : I have been going through some of the recent books on sociology. People are perturbed, because this is a complex human problem. The word has not found a solution to these problems. Those who have taken to the system of divorce, their number is leaping up. Do they find peace? Have they found happiness?

**An Hon. Members:** No.

**Dr. S. P. Mookerjee** : On the other hand new problems have come up. Read some of the latest books on psychoanalysis. There it is clearly pointed out that many of the evils which face the western countries are due to the

mal-adjustment of the sexes. These are complex problems. Why blindly copy something from the west because some people from some part of the world have come and told you that. You are backward unless you adopt this? If there are forward people in this country, who believe in this ideology, give them a long rope, sufficiently long, so that they may hang themselves. But, do not interfere with others who have found a solution of their problems through different doors altogether.

So far as monogamy is concerned. I shall support it with one reservation. Make it applicable to all the citizens of India. It is not a question that monogamy is good for the Hindus and monogamy is not good for others. Stand for one social doctrine.

**Pandit Thakur Das Bhargava:** Why force it on those who do not believe in it?

**Dr. S. P. Mookerjee :** If you believe that monogamy as a social system is the best that India should have, then, do not try to look at it through the Hindu door ; look at it through the human door and make it applicable to all. Behave like a secular State at least in this instance. Take courage in both hands and say that monogamy will be made applicable to all citizens of India. If you cannot do it, do not do it for one section alone. Here, we are living in days of statistics. We swear by statistics, either real or manufactured. I have been trying to get some information: I could not. I wanted to know how many people in India have been marrying a second time.

**Shri Himatsingka :** Or, keeping two wives at the same time.

**Dr. S. P. Mookerjee :** That is what I mean : marrying a second wife when the first is alive. The number is extremely small. It is really no problem. Already, on account of advanced views, society has adjusted itself and on account of economic conditions, general public censure etc., this system has gone out. Why make a parade of this that you are introducing a great reform and legislating for this? If you accept it as a principle, apply it, as I said just now to the whole of India.

So far as the Hindu Code Bill is concerned. I do not know what the decision is going to be. The Prime Minister has indicated that most likely we will not proceed with the rest of the Bill and time may not permit us to do so I am prepared to make this offer. Pass the entire Hindu Code as it is; only make it optional. Those who want it can adopt it. I have spoken to representatives belonging to the extreme orthodox school of view; I have argued with them. Although there are some amongst them who are against the passing of any such Bill whatsoever they also realise that just as they claim to think for themselves, others also must have the liberty to do so for themselves and for their future. That would be a splendid beginning. I am prepared to admit; however much there may be opposition to the Code, that this represents a marvellous piece of work on the part of Dr. Ambedkar and those who have been associated with him. I am quite prepared to admit that this is a most

thorny subject and he has gone through the matter with as much ability as any one could have. For that, if he is prepared to accept an honorary degree to be conferred by Parliament, we are prepared to confer a degree on Dr. Ambedkar. But if you look upon it as a measure, which has to be pushed, down the throat of millions of Hindus who are opposed to it. I say that you will not be doing a service to the people of India. The only way in which you can proceed even at this late stage is this. Let us not quarrel amongst ourselves; let us agree to *do or* on this fundamental issue. If you are prepared to point out that there are certain matters which are immediately anti-social, or corroding into the very life of Hindu society, let us agree to make such provisions compulsory if there are any. Otherwise, this new great structure which you have prepared, keep it there for a few years and say that any one, whether a Hindu or not, any Indian citizen, who desires to accept it can make a declaration, and the provisions regarding marriage or divorce or property, whatever it is, will be applicable to such selectors. That would be the beginning of a great era. For after all, who is going to decide ultimately ? your elections are coming. You then go forward. As the Prime Minister has said, his sweeping wind will come and blow away all opponents and.....

**Shri Kamath:** Whirlwind.

**Dr. S. P. Mookerjee:** Yes, the whirlwind will come. Let the whirlwind come with regard to the provisions of the Hindu Code Bill. Let them go and convince the people and tell them that they are not forcing it on them. Let them say, " we give you the option. Here is a heaven we have created. Come into this heaven and attain *moksha* ". Go and explain to the people and if they feel that it is really such a heaven and not a *dilli-ka-laddu* they will come and take it, and take it with open hearts. There will be ample time. After all, Hindu civilisation has existed for thousands of years, in spite of on slaughters from various quarters, cultural, political and economic invasions and so on. We have survived all that and we are now a free country, and we propose to survive with a much more glorious future than we had attained in the past. But when you introduce social reforms in such a vast country as this, where opinions differ, where attitudes differ and where ideologies differ, then the only way in which you can do it is to go at a slow pace. I am not asking you to abandon principles, which you believe to be true. I am not asking that for the time being. But please go and convince the people, the Hindu people who still claim to live under canons and codes, which are in no way inferior to those existing in any other part of the world. Give them scope to choose for themselves. That is my appeal to the House and to Government and I hope that appeal will be heeded to.

**Shri B. K. P. Sinha :** A cruel destiny always pits me against Dr. Mookerjee, one of the greatest orators in the House and in the country. Dr. Mookerjee and other opponents of this Bill have brought forward the suggestion. " Why not have a Civil Code? Why not extend the scope of this Bill to cover all the

castes and communities and religious groups in India? " And also they ask., " Why not leave it to the different states or different people to adopt the various provisions of this Bill ? " The mover of the Bill has effectively replied to these criticisms. The opponents of the Bill have also referred to the clause in the Constitution regarding discrimination between different persons. It was their contention that in view of that clause, or in view of that article of the Constitution. If you have provisions in the Bill applicable only to one community, that will not be constitutionally valid. In that connection they also referred to certain decisions of some Bombay courts and Madras courts. But they were decisions of the lower courts and since then the Bombay High Court has pronounced that in the cases referred to there was no violation of the discrimination article in the Constitution and that in spite of that article we can have laws for the Hindu community, to the exclusion of other communities. Therefore, that point is settled.

Then there is the question of leaving it to the different States or people to decide by referendum. What are the grounds on which they have advanced this argument? They say that the provisions of the Bill conflict with the fundamental tenets of Hindu law, that they are revolutionary and that they bring about far-reaching changes in the law, and that these changes are not at all essential. These are the arguments advanced by them in support of their contention. Let me scan the provisions of the Bill and see what is the substance of their contention. I will for the present confine myself to the question of marriage and divorce, for that is the only chapter that is going to be discussed.

**Pandit M. B. Bhargava** (Ajmer): Kindly confine yourself to clause 2.

**Shri B. K. P. Sinha** : Yes. I confine myself to clause 2 and I will illustrate my statements only from marriage and divorce chapter. I will not go beyond that. What are the features of this chapter? It has four features. One that it widens the scope within which one can have marriages. You can go beyond the particular sub-caste or group and still the marriage will not be illegal and the children will not be illegitimate. Secondly, this Bill restricts or narrows down the field of prohibition. There were many prohibitions. One could not go beyond certain castes. One could not have marriage within the same *gotra* or *pravara* and with certain relations which fell within certain degrees from the father and mother. This bill narrows these prohibitions. And then it introduces the principle of monogamy, and lastly it introduces the principle of divorce.

First of all, there is this widening of the field of marriage. Are the provisions of this measure really in conflict with the principles of Hindu Law and Hindu religion ? In my opinion they are not. Dr. Mookerjee said that this measure offends the orthodox people, that it offends their religious sentiments, their religious susceptibilities. I am not ashamed to admit that I consider myself as much an orthodox Hindu as anyone else. Have I not very often met Dr. Mookerjee on the banks of the Ganges when we went there for our bath. We

have also often met in the temple of Lord Shiva at Banaras. Our orthodoxy is of the same character and of the same extent. Still I do not find anything in this Bill that wounds my religious feelings or susceptibilities. What was the pristine or original condition of Hindu society ? That we see in the texts of the *Mahabharata* and other scriptures. There were no caste distinctions then as they exist now. Then there were divisions according to the work.

**Shri Syamnandan Sahaya** : Every man is a *Shudra* by birth. It is by the sacraments that he becomes a Brahmin.

**Shri B. K. P. Sinha**: But due to certain adverse factors things changed. Well, I do not want to quote and prolong the discussion, otherwise I will be playing your game. Well, as I was saying, there were no distinctions as they exist now. Every *Arya* was free to marry any other *Arya*. You know that *Anuloma* and *Pratiloma* marriages were permitted by Hindu law. And in adopting the provisions of this measure. I am sure that we are reverting to the old order of things. But that old order was disturbed by certain unfortunate developments in the country.

**Pandit Malaviya** : Will the hon. Member please elaborate that point a bit?

**Shri B. K. P. Sinha** : I have elaborated it sufficiently. We will have to talk for seven days if we are to give enough elaborations.

**Pandit Malaviya** : I want to learn. I want to understand things and what the hon. Member says. I want to know where *Pratiloma* marriages were allowed in India.

**Shri B. K. P. Sinha** : You will find in any book on Hindu laws that *Anuloma* and *Pratiloma* marriages were common.

**Mr. Deputy Speaker**: *Anuloma* marriages were allowed and not *Pratiloma* marriages.

**Shri B. K. P. Sinha** : It was not allowed. The children were known as *chandalas* but they formed a branch of the Hindu society.

**Mr. Deputy Speaker**: All that has been settled by Acts of Parliament.

**Shri B. K. P. Sinha** : There are so many Acts of Parliament in this regard such as the Special Marriage Act of 1872, the Hindu Marriage Validation Act of 1949 allowing marriages between Hindus, Sikhs and Jains and also between different castes and sub-castes then there is the Hindu Marriage (Removal of Disabilities) Act which allows marriage between sub-divisions of the same caste. So these Acts are there and they are of an all-India character and it is open to any Hindu to marry any other Hindu, Sikh or Jain. What we are doing here is simply re-enacting the old laws. Dr. Mookerjee asked if the laws are there, why re-enact them here? I would put it to him that if they are there what crime are we committing by re-enacting them in the Hindu Code?

Then I come to the second feature; restricting or narrowing the field of prohibition. Under the Hindu Marriage (Removal of Disabilities) Act, is it not true that *Sagotra* and *Saprarava* marriages are permitted and that nothing new is introduced in this Code? This provision is already a part of the Hindu

law. In the Hindu society it was only amongst the Brahmins, strictly speaking, that *Sagotra* marriage was taboo. To the *Kshatriyas* and *Vaishyas* *Gotra* had a spiritual or religious significance only. *Gotra* did not mean to them that they were descended from the same ancestor. Only in the case of the Brahmins the sameness of *Gotra* meant that they were descended from the same ancestor. In the case of the *Shudras* *Sagotra* marriage was always permitted. Whether under the law as it was or as it is, we find that *Sagotra* marriages were legal and valid and that is only being incorporated in this Code.

Another restriction introduced is that the field of prohibition is being narrowed, in the case of the father's side to five and in the case of the mother's side to three generations. So far as the Hindu law and the practice and customs prevalent in this country are concerned there is not much of uniformity. Many commentators advocated seven and five prohibitions: others have advocated five and three prohibitions. They thought it was not necessary to go beyond five and three prohibitions. In the *Yajur Veda* the restriction is three and two and in certain Vedic texts it does not go beyond two. In this Bill it is my contention that we are only reverting to the old order, the Hindu law as it was in the beginning before it became contaminated with contact with others.

(SHRI HIMATSINGKA in the *Chair*)

As regards the principle of monogamy, under the Hindu law as practised today the Hindu woman shall have only one spouse.

**Shri Kamath :** One living spouse.

**Shri B. K. P. Sniha :** Living, or dead also.

**Shri Kamath :** One can have one dead and one living.

**Shri B. K. P. Sinha:** In certain cases one only, living or dead. So far as males are concerned, there is a misconception that the Hindu law allows polygamy. But I find that there are certain texts of *Yajnavalkya*, *Mann* and *Apastambha* which ordain and lay down that a Hindu can have a second wife only in certain well-defined circumstances. When the relevant clauses come up before the House I will quote the *shlokas* and the texts.

**Pandit Malaviya :** Do you suggest that ?

**Shri B. K. P. Sinha:** I do not. Now Bombay and Madras have passed legislation laying down that there shall be monogamy. This principle of monogamy has been recognised for Hindus in the Special Marriages Act and in the Civil Marriages Act. I find that this principle, that it is salutary to stick to one spouse has been recognised indirectly by the Married Women's (Separate Residence and Maintenance) Act which recognises that a married woman can get separate residence and maintenance if the husband goes in for another wife or a concubine. It has been recognised that oneness of a spouse is salutary. Any deviation from it is bad and in that case the woman is

allowed the right of separate residence and maintenance.

**Shri Kamath** : What about polyandry ?

**Shri. B. K. P. Sinha**: Then I come to the other principle, divorce. Dr. Mookerjee was furious; he said that Hindu marriage was sacramental, indissoluble, immutable. There is no escape for a man who once commits a mistake in marrying a certain woman ! But I find from some of the old texts that Hindu marriage was not as immutable, as indissoluble as Dr. Mookerjee would claim. I would read out a text which tells us that even the woman has a right to go in for another husband. This is the text of *Narada* and *Parashar*:

*Nashte mrute pravrajite klibe cha patite patyau  
Panchaswapatsru narigan patiranyo vidhiyate*

" Another husband is ordained for women in five calamities, namely, if the husband be unheard of or be dead, or adopt a religious order, or be impotent or become outcaste."

**Pandit Maleviya** : Will you kindly read also the commentary on that ?

**Shri B. K. P. Sinha**; I will leave it for you. So it was not as indissoluble as Dr. Mookerjee would like us to believe. There were provisions for dissolution of Hindu marriages in certain exceptional circumstances. Thereby, the principle of contract was recognised indirectly. Moreover, the Civil Marriage Act also recognises the principle of divorce and these authorities apart, in the modern age, in the present conditions of India, If we do not have a law of divorce for the Hindu society we must be prepared for the disintegration and the ultimate dissolution of the Hindu society.

In this connection I am reminded of two or three cases which created such a furore in Bengal, the home province of Dr. Mookerjee. Hindu law as practised there does not leave any scope for divorce. I know at least of two cases in which the parties belonged to the Brahman caste. They were married. They led a happy life for some time. Thereafter, their life was unhappy. There was no escape for them. In both the cases, the wives went to a famous mosque at Calcutta and were converted to Islam and thereby they got the marriages dissolved. Society in India has reached such a stage that if you do not have a law of divorce you must be prepared for such incidents, I do not know whether Dr. Mookerjee by standing against this provision is doing any good to the cause of Hindus or like all fanatical champions he is doing positive harm to Hindu religion and Hindu society.

**Shri Chattopadhyay** (West Bengal) : Did they not later on become Hindus ?

**Shri B. K. P. Sinha** : At any rate, it is clear that if you want divorce you have to be converted to some other religion. I urge that only.

There are many such cases where parties have adopted some other religion just for obtaining divorce. We must take note of advance and progress. We

must see the stage that society has reached. We are not living in an age when India had no contact with the outer world. We are living in an age when ideas have a knack of crossing the borders of countries. We are living in an age when certain theories of liberty and certain theories of freedom have crept into the minds of men and women, especially young men and women and, if we do not allow scope for the working of those ideas it is my fear that Hindu society as we know it today shall not long be able to maintain its existence.

Then some of my friends urged that the provincial laws were there and why we should not leave the matter to the provincial governments. That is exactly the reason Why I urge that we should have a Central law. Marriage, divorce, adoption, succession and inheritance form part of item 5 of the Concurrent List. It is open to any State Legislature to Legislate on any of these matters and some States have legislated. Supposing we do not legislate, what would be the consequence ? The consequence would be that custom, for which Dr. Mookerjee shed so many tears, would be abrogated in all the different provinces by the provincial legislations and then you would have statutory laws differing from each other in all the provinces. If custom is the only vehicle of progress and development, that vehicle will be destroyed and there would be rigid compartmentalised law-26 or 30 laws, in fact as many laws as there are provinces or States in India. I shudder to think what will be the effect of that on Hindu society and ultimately on the strength of the nation, for a stable and uniform society is an essential ingredient of a strong and stable nation.

Then there is the question of inter-marriage. In previous times, people of one territory were born in their territories; they grew up in their territories ; and they died in their territories. They were governed by the customs and usage of that territory. What do we find today ? In this Parliament, in the galleries of this Parliament, there are Members from all parts of the country.

**Shri Kamath:** On a point of order—can the galleries be referred to?

**Shri B. K. P. Sinha:** I am not addressing the galleries. If I can talk of the country, I can as well talk of the galleries.

Residents of various parts of the country are assembled here. Not only in this City, but in every important city of this country you find persons from different provinces—in Calcutta you find people from Travancore ; in Travancore you find people from Bihar and Calcutta. Very often, the residents of the different provinces, in spite of the restrictions imposed by customs and usage and sentiments of the orthodox, find ways of coming together, in nuptial contract. What shall be the effect on them and their progeny if we allow these various provincial laws to operate? Suppose a man from Bombay marries a girl from Bihar and in Bihar he marries another woman. In Bombay monogamy is the law. What will happen to his marriage in Bihar? While his children by that Bihar wife will be legitimate in Bihar, when they go to Bombay they shall be considered illegitimate and shall have no civil

rights. What will happen to the hundreds of couples coming from different castes and different provinces? What will be the rights of those children? If you allow individuals to opt, many anomalies are likely to arise. A man may opt for the new Code; his father may be governed by old Hindu law; and the optee's son may not opt for the new Code. What laws would govern such a family? If, therefore, the suggestion of my hon. Friends were to be adopted, there will be such confusion, that the confusion in the tower of Babel as compared to this was nothing. It will take the Judges centuries to clear the confusion. Therefore, I feel that we have reached a stage when in the interests of Hindu society we cannot but have such a law.

Previously in the provinces there was certain rigidity—people living in a certain province had one social tradition. People of the same caste had almost the same intellectual development, the same cultural code, etc. In those circumstances, when one married out of his caste one went to a different world altogether. But today these cultural, economic and intellectual disparities are disappearing. Society in India is becoming one. While previously there was some justification for marriage within one's caste or inside the province, there is no such justification today. because the cultural level, the intellectual level and the economic level of the various communities are coming on a par with each other. According to eugenic principles marriage outside one's caste under the previous state of affairs would have been bad. Today the laws of eugenics point in a different direction altogether. They point to a direction in which the hon. Mover of this bill is attempting to lead us.

Dr. Mookerjee talked about the intensity and the depth and breadth of feeling in the country against this Code. I am a villager. I do not come from one of those advanced cities where the most modern theories are the order of the day. I know the minds of the villagers on this matter. I know that there is a lot of misapprehension in their minds about this Bill. That is because the opponents of this code have for the last five years or so been carrying on a tearing and raging propaganda against it while the supporters of the bill have been keeping mum and silent. In my area also people were by and large, opposed to the provisions of this Bill. But when I explained to them the provisions of this Bill in detail I can tell you that at least 70 per cent. of them became converts and they realised that nothing short of this was needed for the society. When Dr. Mookerjee says that there is intensity of feeling I concede that. But when he talks of the depth and breadth of that feeling I disagree. There is no depth in it because that feeling is based on ignorance. There is no breadth in it because the people, by and large, are not against this Code. It is only a handful of moneyed people who care more for their property, for their land, for their shares who are putting up such a row against this measure. I have had intimate talks with some of these orthodox people. They do not care a grain, an iota for the Hindu Law or the Hindu principles, or

the *rishis* or the *smritis*. What rouses them into opposition is the property clause.

**Shri R. K. Chaudhuri:** That has been dropped now.

**Dr. Deshmukh** (Madhya Pradesh) : But wife also is property.

**Shri B. K. P. Sinha:** These are the three lines of my argument. There is nothing revolutionary in this. All that we are going to have is already there on the statute books. Secondly, this Bill does not go against the fundamental principles of Hindu religion. Rather, it tries to bring the circle full. The wheel has gone a full circle and Hindu law is being restored to its pristine purity. Thirdly, this law is essential for the existence of Hindu society in the circumstances of today.

Since one of my friends from Bihar, Mr. Syamnandan Sahaya, when he spoke last referred to Dr. Jayakar, I would like to quote a very small paragraph. While writing his foreword to *Hindu Law* in *Bharat* published in 1951—and the foreword was written in 1951—what has Dr. Jayakar to say about this aspect—not about Hindu Law in general but about the aspect to which I referred ? He says :

" The author has not omitted to note some of the prominent deficiencies which exist in present-day provisions of the Hindu Law, requiring early redress."

**An Hon. Member:** Who is the author ?

**Shri B. K. P. Sinha :** The author is another person, but the foreword is written by Dr. M. R. Jayakar—a scholar of Hindu Law, not the politician.

**Shri Syamnandan Sahaya:** Also a politician.

**Shri B. K. P. Sinha :** Probably my friend Mr. Syamnandan Sahaya referred to Dr. Jayakar, the politician. I am referring to Dr. Jayakar, the scholar.

**Shri Syamnandan Sahaya :** Do you mean that politicians are not scholars ?

**Shri B. K. P. Sinha :** They are. And then Dr. Jayakar goes on to say in his foreword:

" He observes that in modern times facilities of transit and interchange have enormously increased and various causes, appropriate to the times have compelled people of different races and religions to live together in territories governed by different systems of law. These new factors naturally tend to complicate problems of human life in the sphere of their legal relationships. Rules framed to regulate municipal and purely local set of circumstances prove inadequate or even out of place to deal with such problems arising out of the introduction and presence of foreign elements within the territory. The development of a Body of Rules to cover these new sets of circumstances is already overdue."

**Dr. Deshmukh;** I am afraid probably my hon. Friends who welcomed my getting up to speak by saying " hear, hear " may be disappointed at what I am going to say today.

**Shri R. K. Chaudhari :** Have you changed your mind ?

**Dr. Deshmukh :** To a certain extent, probably, yes.

**An hon. Member :** Wise men always do that.

**Dr. Deshmukh :** I have been member of the Select Committee and I have appended a note of dissent to the Committee's report. But that covers only four points. That note of dissent itself shows that apart from those four points, I am in general agreement with the many provisions proposed to the Bill. At the same time. I always felt that the time had not come when it was possible to revise, with some other and different ideals in front of us, the whole structure of the Hindu society and to change it radically. Ours is a vast country and the Hindu community is extremely large and numerous. We are also highly uneducated and absolutely, illiterate. From that point of view if you wish to change the basis of the Hindu society to any violent or great extent, the people who are not capable of understanding the changes are likely to suffer considerably. From that point of view I thought that the reforms so far as the Hindu Law is concerned should be as and when required and whenever a certain situation demands them, and only when the public opinion was ready and well-informed and was capable of following all the modifications in the social structure which we desire to bring in then alone we should attempt a thing of that nature.

Therefore, I hold that the Hindu Law even when codified will not help us unless it is your desire to remodel the whole Hindu society for which the time, I submit, has not yet arrived. The Hindu law as laid down by the *Smritis* and as interpreted by the High Courts and the Privy Council is fairly well crystallised; there may be certain differences of opinion; there is a possibility of conflicts in interpretations but they are understandable and we have had this experience of these 150 years and this has not led to any great suffering or any great hardship....

**Shri Lakshmanan** (Travancore-Cochin): On a point of order, are we at the general discussion or discussion on clause 2 ?

**Mr. Chairman :** He is in order.

**Dr. Deshmukh:** My remarks are really relevant so far as the discussion on this clause is concerned. What I was going to point out was that if we were going to remodel the society and change the whole law so as to suit modern times in an ideal manner that would be something far different from what we are attempting here. Even in what we are attempting at the present moment, I do not think that the Hindu Code represents a complete remodelling of the Hindu society. We are after all codifying what exists although with some changes. Because at the present moment and in this modern age, if we really want to follow modern ideas, I do not know whether the conception of any private property is going to survive very long. What is the use therefore of discussing the property law and debating whether it is according to the *Mitakshra* or the *Dayabhaga* or we are going to introduce the principle of

primogeniture or something else. I personally feel that so long as we have the Hindu laws by which we are governed at the present time, and so long as it is a fairly well understood law, which the whole population and the whole Hindu community understands, the time has not come when we should attempt a radical and whole-sale alteration of the law which governs the society. Because, that is likely to create more trouble than we have at the present moment. At the same time, I have always advocated and I am in favour of removing those difficulties, those harassments and those persecutions, which exist, and because of which, there is human suffering. So far as these things are concerned, I think it should be the endeavour of every Member of Parliament to support the Bill; wherever it is found that our social structure is likely to suffer, and where it has led to a good deal of inconvenience and trouble, those reforms ought to be taken up and there should be no compromise with any orthodoxy.

1.00 P.M.

**Shri Kamath:** While we would like to hear the hon. Member, there was a half-hour discussion to be taken up at one o'clock....

**Mr. Chairman :** That has been postponed.

**Shri Kamath :** We have had no notice.

**Mr. Chairman :** It has been struck out here.

**Dr. Deshmukh :** So far as removal of difficulties and hardships is concerned, I am prepared to go even farther than the sponsors of the Bill. The prohibition of polygamy and introduction and enforcement of monogamy are extremely desirable reforms. I also agree that it is time that the Hindu society provided for divorce under the law. There may be some restrictions imposed; but I do not think it is possible to shut our eyes to the instances and facts, which come to our notice. It may be a thing which my orthodox and *sanatani* friends may dislike. Of course, many of them dislike any change whatever. Unfortunately that is the position. Here, I must clear a misunderstanding. I have been regarded by some *sanatani* friends as a staunch opponent of the Bill on all points and in every respect. It is therefore that I have prefaced my remarks with the remarks that my hon. friend Pandit Mukut Bihari Lal Bhargava will probably not welcome what I was going to say today. The provisions should, however, be confined to these two aspects.

Further, I would like some provision by which we can better the conditions of our widows. I have seen a great number of instances where they are undergoing inhuman suffering. So far as widows' rights to property are concerned, we have had amending Bills. We have passed certain laws. But, to my knowledge, they have not benefited those for whom they were intended. I would like to persuade the hon. Members of the House that we should make some provision so far as they are concerned.

**Shri Bharati** : We are not discussing that now.

**Dr. Deshmukh** : I do not know if any announcement has been made in the House whether we are going to leave out of consideration those other sections and confine ourselves to only these things viz-, marriage and divorce. Because I was not here, I do not know what decision has been taken.

**Shri Bharati** : We are not likely to take them up.

**Mr. Chairman** : Let the hon. Member go on.

**Dr. Deshmukh** : If it is intended that we should confine ourselves only to the passing of a law that one person can at one time have only one wife, I would not very much object. But, as has been pointed out by my hon. Friend Dr. Syama Prasad Mookerjee, much ado is being made about a thing, which is dying out, by itself. The present struggle for existence and the economic forces at play are themselves bringing about the desired change. Therefore, although it is a necessary reform, I do not think it is something that some people may be prepared to die for.

So far as divorce is concerned, I think there is much to be said in favour of divorce. At the earliest possible moment, this provision ought to be made. As has been pointed out by many Members, this is only a permissible reform, merely making provisions for divorces—the mere presence of the provision does not mean that every one will take advantage of it and get a divorce. What is the present position? There are certain States— Baroda for instance, where divorce is allowed. And many who cannot agree between themselves or for other reasons who cannot get on, merely go and stay at Baroda for some time and obtain some sort of certificate that they are residents there and in this way get their purpose fulfilled. Wherever a married couple cannot get on together, may be for any reason, may be because one of them is suffering from a bad disease or there may be many other factors which cause a deterioration of their relationship they should be able to separate. It is human to expect under modern conditions that this freedom should be made available to them and it should be possible for an individual to get a divorce and separate. From that point of view, I submit that the provisions so far as divorce is concerned, are desirable. But on one point I vehemently disagree with Dr. Ambedkar and that is with regard to not recognising the customary divorce. He wants that all divorce cases must...

**Shri R. K. Chaudhari**: I want to get a point cleared. Does the hon. member advocate divorce of sacramental marriages and also at the same time the continuance of sacramental marriages?

**Dr. Deshmukh**: I do not think there will be any difficulty. Even now a good many sacramental marriages get dissolved. That happens in various communities and under the Hindu law. And who is going to say that marriage under the so-called backward communities, which really are more advanced than others are not sacramental marriages? They are and they are

recognised by custom and their divorce systems are also recognised by customs and by the caste *panchayats*. But the Hon. Minister wants that all these cases must go through an involved method where lawyers will be necessary and all sorts of evidences will have to be taken and the whole thing will prove to be a hardship to these people.

**Dr. Ambedkar :** Let there be customary marriage also.

**Dr. Deshmukh:** If the provisions of the Bill are limited to the removal of the defects now present and we do not go further than that, then I would be prepared to support and I will not say that since you are not going to make it applicable to everybody in India therefore it should not be made applicable to Hindus also. I had raised that point as a major issue, because I felt that if it was intended that the whole of the Hindu society should be radically changed, then there was no reason why we should not make all the provisions of the measure applicable to all the people living in India. But since this is intended as a sort of a reform and the scope of it is confined specifically to certain sections. I have no quarrel so far as this point of view is concerned.

Dr. Mookerjee undoubtedly went too far in asking that it should be left to the option of people. If that be the course that we adopt, then even the simplest possible reform demanded by society would be impossible. I do not know why he took that view though he has been very reasonable on most other points. This smacked a bit of a no-changer. He was prepared to support the divorce provisions if monogamy is made applicable to all the communities living in India. Although it looks plausible, it smacks more of obstructionist tactics than helping the passage of the Code. I for one stand even for radical reform, which will not create confusion in the Hindu society. These provisions are not such as are likely to create confusion, because everybody need not resort to divorce or take advantage of the provision. There are innumerable cases where both man and wife suffer and desire that separation would be ideal. For such cases we make provisions by which separation would be allowed and I do not think it should be anybody's business to come in their way merely on the ground that in the remote past we regarded marriage as a sacrament and not as a contract. As I have already said even sacramental marriages could be dissolved according to custom. After all recognition of sacramental marriage is recognition of customary marriage, because it is governed only by custom. There are many different forms of marriage. In some cases there is *saptapadi*. I hope the modification, which I have suggested, will be acceptable regarding customary divorce. Originally it was the intention that all custom should be wiped out altogether. I am glad that Dr. Ambedkar has modified that stand but I am afraid he will have to modify it further. In one place where he had to explain his viewpoint he said that custom must be such that it must be sensible, reasonable and satisfy certain other requirements. He expected custom to answer to standards of reasonableness. But what is reasonableness? It can differ from man to man and from group to group.

What may be regarded as reasonable by Dr. Ambedkar would be entirely unreasonable to Mr. Kamath or Pandit M. B. Bhargava.....

**Shri Kamath** : Do you lump us together ?

**Dr. Deshmukh** : Oh, No ! Not jointly but severally. From the point of view of custom I must say that the learned doctor, must be willing to go a little further, because every custom has had a history and it is not arguable on the basis of reason. Originally the view of the sponsors of the Code was that custom, whatever it was, was bad. That was why they provided that all " custom " was bad and no custom will be recognised under any circumstances. The whole society was to be governed by the provisions in black and white of the Code and no variation of any kind was to be recognised. Fortunately you have come to a stage when you are prepared to recognise custom. But to what extent is the question ? On the one hand you say that it should be reasonable but in many instances this is a contradiction in terms.....

**Dr. Ambedkar** : Why ?

**Pandit Thakur Das Bhargava** : It has to be reasonable before it is recognised.

**Dr. Deshmukh** : In customary marriage one of the things essential and recognised as a necessary ingredient is that the bride and bridegroom must take seven steps round the fire. I do not see any reason or reasonableness behind it. What function does it perform ? How does it help so far as the wedlock is concerned ?

**Shri Kamath** : It is symbolic.

**Dr. Deshmukh**: Similarly.....

**Mr. Chairman** : Is the hon. Member likely to continue his speech ?

**Dr. Deshmukh** : Yes, Sir, I will take sometime longer.

*The House then adjourned till Half Past Eight of the clock on Tuesday, the 18th September, 1951.*

**HINDU CODE—contd..**

**Clause 2.—(Application of Code)—Contd.**

**Mr. Deputy Speaker:** The house will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law as reported by the Select Committee.

**Dr. Deshmukh** (Madhya Pradesh) : Sir, between the time I left my speech incomplete yesterday and now, two fine ladies who did not share...

**Shri Sondhi** (Punjab) : What is meant by " fine ladies " ?

**Dr. Deshmukh** : Two cultured and....

**Shri Sondhi** : You may say modern ladies.

**Dr. Deshmukh** : No, not so modern as we are accustomed to see. As I was saying, these ladies placed before me very strongly and sincerely their point of view. It was clear they viewed the Bill from a different angle. And while the Hon. Prime Minister is here I may also say that these ladies complained that their point of view has never received adequate consideration at the hands of the Prime Minister, and that there have been attempts made to come in the way of his being informed of the strength of their feelings and the view point that they wished to present before him. If this is a fact, and if it is not too late to do so, I would feel much obliged if these ladies could call upon the Prime Minister to place before him their point of view. They are entirely opposed to the Hindu Code Bill in any shape or form, including the provisions relating to divorce and monogamy. They say that it is an attack on Hinduism and on Hindu religion which will be not for the good of anyone. They also contend that essentially these are radical changes and these are sponsored by a few....

**The Minister of Law (Dr. Ambedkar)** : For my own enlightenment, I would like the hon. Member to say what he means by " they ". I could not hear the opening part of his sentence.

**An Hon. Member:** Two fine ladies, he said.

**Shrimati Durgabai** (Madras) : Will the hon. Member give us the names of these ladies for the benefit of hon. Members, because this may reflect on many ladies who are not of that opinion.

**Mr. Deputy Speaker:** Two ladies do not cover the entire world.

**Dr. Deshmukh:** They are as representative as my learned sister here claims to be in this House. And, Sir, it is also their contention that in their discussions they have been able to convert many persons who had agreed with my hon. sister here and who were of her inclination. They are opposed to divorce because they say....

**The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru):** Who are they?

**Dr. Deshmukh:** Sir, by this interruption I think the Hon. Prime Minister has admitted the statement that he has not seen them.

**Shri Jawaharlal Nehru:** I do not know who they are.

**Dr. Deshmukh:** There is a Women's League in existence in India and....

**Shrimati Durgabai:** Yes, nobody denies that; but we want to know the names of these two ladies.

**The Deputy Minister of Food and Agriculture (Shri Thirumala Rao):** He is referring to persons who are outside the House and are not in a position to defend themselves.

**Mr. Deputy Speaker:** There is no question of defence or offence.

**Dr. Deshmukh:** I am glad Shrimati Durgabai admits the existence of a Women's League.....

**Mr. Deputy Speaker:** There are opinions and opinions on the Code. hon. Members are entitled to say that there is a certain opinion, that some ladies came to him and represented it to him. Further reference to the ladies is not necessary. It is for the House to accept or reject such an opinion of those people. In so far as a Member wants to mention the opinion which he is either going to support or controvert he can do so, instead of saying two ladies every now and then.

**Shri Jawaharlal Nehru:** The difficulty is that he particularly referred to me and wants me to see unknown people of unknown whereabouts. How can I do that?

**Dr. Deshmukh:** They will not remain unknown and unseen as soon as they appear before the Prime Minister.

**Shri Karunakara Menon (Madras) :** Are they above sixty or below sixty ?

**Mr. Deputy Speaker:** Evidently the Prime Minister has not given an interview to those ladies. If the hon. Member is not willing to give the names, he will communicate them.

**Shrimati Durgabai:** Unless they want to remain anonymous.

**Dr. Deshmukh:** Not at all. The mere mention of there being ladies of a different viewpoint has excited our sisters here so

much. (*Interruptions*). They are also aware that a good many ladies, not alone the few ladies who came to see me, have resigned from the All India Women's Conference.

**Several Hon. Members :** Who are they ? (*Interruption*).

**Dr. Deshmukh:** I can give not only their names but if I present them before you in all their strength you will probably be frightened. Their number is so large that it is impossible to give their names.

**Shri Sidhva (Madhya Pradesh) :** They are unknown women : they were canvassing in the Constitution House yesterday.

**Dr. Deshmukh:** You have seen two of them yesterday.

**Shri Sidhva:** They were unknown women.

**Dr. Deshmukh :** Those are the very ladies I am referring to.

**Mr. Deputy Speaker:** The hon. Member will resume his seat. This is a very contentious matter. There is a large body of opinion in favour of it and there is also a body of opinion against it. It is no good talking of unknown women and unknown men. It does not add to the dignity of the proceedings of the House. The hon. Member need not refer again and again to these two women. There are not only two but two thousand against the code and there are also two million on the other side. So there is opinion both for and against. We are here discussing the bill dispassionately. Let nothing be said which is derogatory to the high dignity of the House. Unknown women and unknown men are expressions, which are not rather very parliamentary. The hon. Member need not pursue the matter by saying two ladies, again and again.

**Dr. Deshmukh:** I had no desire to do so but for the interruptions. Sir, I will now come to the various amendments moved in the house. My friend Dr. Mookerjee suggested many alternatives to the acceptance of the Code. One of them was to make the provisions of the Code optional. There is also an amendment to say that there should be a referendum and if the majority of the people supported the Code in the referendum, then it should be made applicable. I had given notice of an amendment last time which referred to the Hindu Code as a whole and suggested that it be made applicable in any State after the Legislature of the State after the next elections had ratified it. There is a good deal of force in the suggestion regarding ratification by the State Governments and State Legislatures. After all we are not trying to go the way of Hitler and other dictators who forced social and other reforms on the people. We are a democratic nation and want to stick to

democratic methods. If there is to be democracy and since this is only a personal law and not a law necessary for the maintenance of law and order or other purposes (it may be necessary in the view of some for the advancement of the community) there can be two opinions and one can be as honestly and steadfastly held as the other one.

In the case of some of the reforms suggested the experience elsewhere in the world has not been altogether happy. Take for instance the divorce law. There are various degrees of divorces and varying facilities for obtaining the same current in the world. Those who advocated divorce and wanted to organise society on individual freedom have come to grief and looking at these consequences in foreign countries, when some of our people merely try to imitate others, because they think it is more fashionable to advocate that view, some people feel apprehensive that this is sheer mad and sheepish imitation. That spirit of sheer imitation is there and the support for it is also there, because these people have never had the patience to study the actual results which have come about in foreign countries. So the orthodox opinion which does not share the view of the reformists is equally honestly held and is as well founded. When we know that the Hindu religion, the Hindu law and the Hindu custom have survived the onslaughts of history for thousands of years, naturally we feel that this is the one country or nation or community which has something of its own and instead of there being a flat uniformity, the consequences of which have been evil in many cases, why not try and evolve a system just as it has been evolved all these thousands of years. I do claim that the Hindu religion and the Hindu law are the one religion and the one law which have been evolved through the centuries. They have not remained stagnant and I am sure Dr. Ambedkar will admit that the Hindu law and custom have never been static: they have adjusted themselves to the circumstances from time to time and are capable of doing so hereafter also.

It is quoted that the Chinese and the Americans say that we are a backward people, because we have not got such and such a social system. Before we accept such comments bearing upon our society and before we incline ourselves to accepting their viewpoint, we must know what those people are. May I ask how far these Chinese and Americans have studied our religion and our law ? Have they imbibed the spirit of the Hindu religion before they condemn it or suggest any reform in our society ?

That is a very pertinent question. Merely saying that a group of persons from foreign countries do not like it and suggest some modifications in our law or custom cannot be accepted. If we merely try to please a certain group of individuals without judging the background of the views they hold we would be meeting the fate of the donkey, the old man and his son, who tried to please every group of spectators they met on their way. In the beginning they were carrying the donkey and the old man and his son were walking. People laughed at them saying " Here is a man leading a donkey without either he or his son riding " so the old man got up on the donkey leaving the son to walk beside him. Still people laughed at them saying, " Here is the old man riding the donkey leaving the poor little boy to walk along." So the boy also.....

**Mr. Deputy Speaker:** Every body knows the donkey story.

**Shri Bharati (Madras) :** Who is the donkey here ?

**Dr. Deshmukh :** I want to impress upon the people that they are donkey ing.....

**Mr. Deputy Speaker:** Details of the donkey story need not be retailed here.

**Dr. Deshmukh:** I would not have referred to this story but since this donkeying is going on time and again, very sensible people who ought to understand the value of the opinions of foreigners somehow or other try to persuade us and influence us by that mere fact. They say because certain foreigners say something there should be certain changes. I for one would not only not listen to such opinions but would not like anybody to give up his own viewpoint on this ground.

So far as the basis of the Code is concerned it should be introduced only where we find that the circumstances demand it and not force things against the will of the people. It is certainly true that there is a very large body of educated women who are behind this Code. They are said to be very firmly of the opinion that the passing of the Code is necessary. If we analyse the amount of education there is especially among the women of India, we will realise that these women are hardly a drop in the ocean; the number of these women who are asking for a radical reform and changes in our law is extremely small. On the other hand, they are so impatient that they are not prepared even to listen to the other point of view of the ladies who have as much sense as they have except their English or Foreign education. When I was referring to "they ", I was referring to those millions of women living in our villages who have as good common-

sense, and who know what they are and what they wish to be; it is they who are apprehensive of the changes that you are suggesting because even the introduction of divorce is going to change the attitude of everybody, of the society as a whole. The question I would like to ask is : Are you going to enter a wedlock with the idea of divorce, or are you going to enter wedlock with the idea of staying in it permanently ? If you adopt measures of easy divorce there is going to be a big change of attitude. Of course we are prepared to have that change and suffer the consequences, but the educated ladies who are sponsoring and advocating the passing of this Bill have not thought of all the consequences that are going to be fall especially to the lot of the illiterate women. After divorce an educated girl may be able to stand on her own legs, get a sufficiently lucrative job anywhere, and probably get a better husband. But what is going to happen to an illiterate woman? My lady friends here still complain of the dominance of the male sex, and to the extent that the woman is tyrannised by men, what is going to happen to the illiterate woman who will be the object of these vagaries and domination of the male sex? Have these educated women ever considered the consequences which will result from divorce for example, the care of children and their protection?

So, although I have expressed myself in favour of it, I would like to caution that in introducing any reform or changing any portions of our law we must coolly study the consequences that are going to result therefrom. Unless we do that we may be trying to do things, which may not be necessary at all. I feel that there is much in the Hindu religion; there is much in the Hindu Law, which deserves to remain, though probably in a slightly reformed condition. But the attitude behind some of the suggestions is somewhat anti-Hindu: they regard everything Hindu as suspect and look down upon it with contempt. They have somewhere or somehow imbibed the idea that whatever exists in India is absolutely rotten and that unless they go on the lines of foreign nations and imbibe their ideas and introduce them here, the Hindu society will not come up to the standards they expect of it. I am quite prepared to admit that they are actuated by honest motives, but at the same time there can be a different point of view which suggests that merely by blind imitation you are not going to survive. The way to survive is to modify according to the times and not go on in a whole-hogging fashion to change the very basis and fundamentals of our law and society. And from that point of view I suggest considerable

caution. When I spoke yesterday, I thought the intention was to pass this Bill with only the marriage and divorce sections in it and that the rest of the bill was not likely to come up. But now I find that is not the attitude of those who are in favour of the Bill ; they do not wish to omit the other portions. They are prepared to confine the enactment to the two chapters only from the point of view of availability of time but they do not wish to give up the rest of the Bill. If that is the idea, then I am afraid many of the Members of this House will probably change their attitude because it does not mean it is a compromise which will last as after getting these two chapters passed they will probably insist upon the property clauses and the other sections of the Code. If we look to the history of the codification, we will find that there is a great and important body of public opinion against the Bill. Most of the bar associations have not only been against modification but they have been against codification also. The Committee that was appointed for the purpose found, when it went round the country, innumerable associations and innumerable individuals who expressed their strong condemnation of the proposals that were going to be made. Under these circumstances, I feel that it is not proper that we should say that after passing these two chapters we will take up the rest of the Bill also and that we will not give it up. It should be definitely understood that so far as this Parliament is concerned, we should confine to the marriage laws provided in this bill. The question of whether there is any possibility of the property clauses being taken up will, I think, determine the attitude of support or opposition of certain Members of the House. If it is the idea that the entire Code should be taken up, then it would be very wise to leave this to ratification by the State Legislatures. Then we will be giving them sufficient time to educate public opinion so that if the Code is really wanted, if there is any important *body* of public opinion in favour of the various detailed changes sought to be made in the Hindu Law, then the concerned State can accept it. And there is no harm in one State accepting it and another not accepting because this is a matter of personal law and it should be completely open to any individual or group of individuals to choose the sort of law that they want.

While I support the provisions with regard to monogamy and divorce and say that they may be passed, although I would like to suggest certain modifications, and one I have already moved yesterday, namely that the customary divorce should be allowed

to continue—and I am glad to find it is likely to be accepted, I suggest that the present proposals should be confined only to the marriage and divorce laws and nothing else should be enacted by this Parliament for the present.

**Shrimati Jayashri** (Bombay) : I beg to support the amendment moved by the Hon. Law Minister to clause 2. I am glad that sub-clause (4) of clause 2 is sought to be dropped. That sub-clause says :

" Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all the Hindus whose marriages have been solemnized under the provisions of that Act prior to the commencement of this Code."

10-00 A.M.

I am glad that this sub-clause has been dropped, because under the Special Marriage Act the rights that people enjoyed were much broader. This applies to the Indian Succession Act also. Although under the Hindu Code we are trying to bring about reform, let this Code does not confer the same rights, which are available under the Special Marriage Act.

**Mr. Deputy Speaker:** Under the Special Marriage Act, they cannot adopt. Under this Code, they can. Is that not an advance?

**Shrimati Jayashri** : I am saying that the inheritance rights there are broader than under the Hindu Code. So, I am glad that he has dropped this sub-clause from the Bill.

With regard to the argument as to why we should not make this an ideal and universal Code which can be applied to Muslims, Parsis and Christians, I would like to say that we must first find out whether Members are prepared to go so far. It would be an ideal Code if we could reach to the stage of the Indian Succession Act and the Civil Marriage Act, but it is clear that our society is not at present prepared even to accept the reforms under the Hindu Code and go thus far. So, I wonder whether Members will accept the broader principles which underlie the Special Marriage Act.

Yesterday, Dr. Mookerjee said that the Muslims also should be asked to accept the monogamy principle. I would like to say that the Muslim Law gives much more rights to women. Under our existing Hindu Law, women are not given those rights.

**Mr. Deputy Speaker** : He was on the question of monogamy.

**Shrimati Jayashri:** Monogamy and sacramental marriage. In

regard to our sacramental marriage, this is what the married couple pledge themselves to do:

" Having taken these seven steps with me, we have become companions. May I retain that companionship and never part from the nor thou from me. Let us be united. Let us always take counsel together, loving each other and ever ready in each other's company, let us be united in mind and grow together in strength and prosperity. Let us join in our aspirations, our vows and our sorrows."

May I ask whether this ideal of sacramental marriage is kept in our present society? I would request Dr. Mookerjee to give his honest opinion whether he really thinks that no reform is necessary in our present Hindu Marriage Law. We all know that our Hindu society allows a man to marry as many times as he likes. This vow which we take during the marriage ceremony is only meant for women. Our laws are one-sided. They are only meant for women. We all know that when a man becomes a widower, even at the burning ground when he goes there to attend his wife's funeral his engagement takes place. So, a man considers marriage in such a light manner. And still, we talk of our Hindu marriages being sacramental.

**Mr. Deputy Speaker :** Widows also can marry.

**Shrimati Jayashri:** Women are more conservative in that way. They still consider that they would not like to marry even if they become widows. They do not seek to have second marriages, but due to the one-sidedness of our Hindu Law *Nariprathishta* has gone down.

Hon. Members must have read K. Mushruwala's article in the *Harijan* where he shows how we are treating women in our society at present. We all know how in the Mahabharat the clothes of Draupadi were removed and she prayed to Krishna:

*"Kauravarnavamananamamuddhararswa Janardana"*

(" I am sinking in the sea of *Kauravas*. Save me O Krishna.")

Similar cries we hear today from our poor women who are ill-treated by our society. We call our Hindu society *Sanatana*, that is to say, *Sada Nutan* (always new)—it is always changing. Change is the essence of life. If society does not change, it becomes stagnant. For thousands of years our society has survived because it has accepted changes.

The idea has been pressed that we should not have divorce; that our marriages are sacramental, as Dr. Deshmukh said just

now, from olden days we read in our *Smritis* (*Parasara* and *Narad*) that under certain conditions divorce was accepted. In the Hindu Code today we have tried to maintain the sanctity of marriage and the welfare of the parties. The framers have provided prior remedies for avoiding the extreme step of seeking divorce and those are restitution of conjugal rights and judicial separation. Therefore, divorce is not very easy. In Baroda the Divorce Act was passed in 1937, and in the analysis taken in the year 1939 the cases of divorce and judicial separation were 42 in number. Out of these, eleven were due to cruelty; two due to desertion and cruelty, seven due to desertion by husband ; one due to desertion by wife; six due to cruelty and habitual drunkenness of husband and marrying a second time. These cases show that divorces are not very easy. Only under special conditions divorces are granted.

Also we know that divorces are prevalent in the lower classes. Only in the upper classes this Code seeks to introduce this change. Yesterday, Dr. Mookerjee raised the cry of ' religion in danger '. I would ask him whether beating of one's wife is considered to be religious. A woman filed a suit in one of the courts in Madras for assault by her husband. And the learned judge gave a judgement that beating the wife is allowed in Hindu Law. So, may I ask him whether such cruel customs can be called religious ? Religion is always personal contact with God.

*“ Ishwarah sarvabhutanaa hrddesherjun tishthati”*

[O Arjun ! God lives in the hearts of all living beings.]

It is not by passing particular laws that religion can be in danger. As I said Hindu religion is a vast ocean where changes take place now and again and we have accepted these changes. That is why our structure of Hindu religion has lasted for such a long time. May I also draw your attention to the necessity of changes in Hindu structure. I would say that at present our law is one-sided. We do not give any relief to our women. We have our National Planning commission which wants to plan on the present structure. I would say that unless the social structure is changed, it is no use planning on that body which is rotten. I would in this connection like to make some suggestions for improvement in our society. In a planned society woman's place shall be equal to that of man: equal status, equal opportunities and equal responsibilities shall be the guiding principle to regulate the status of woman, whatever

the basis of society in the plan. Woman shall not be excluded from any sphere of work, merely on the ground of her sex. Marriage shall not be a condition precedent to the enjoyment of full and equal civic status and social and economic rights by woman.

May I ask whether at present the status of woman is such, so that we can plan properly in the present society. Family life and organisation and woman's enjoyment of a share in the property are very necessary. Marriage and succession laws governing these are also necessary and that is why I feel that unless some change is made in our present Hindu Law, I do not think it would be possible to build on the structure that we find at present.

The Women's Conferences have always asked for a common Code. We are also in favour of a common Code. We are not asking that special privileges should be given to only Hindu women. We all know that at present our women are suffering and are backward. Parsi, Christian and Muslim women are far ahead of Hindu Women in this respect and that is why at present we are supporting this Hindu Code. As I said earlier, if we make this Hindu Code an ideal one, the other communities also will have no objection in accepting our Code.

Dr. Deshmukh said that many women have resigned from the All-India Women's Conference on this question. On the contrary I would say that in our Conference we have from the very beginning, asking for these changes and it was due to our request that so many pieces of legislation on marriage, right of women to property, etc., were introduced. In Bombay when Dr. Deshmukh of Bombay wanted to bring the bill on giving property rights to widows, we requested him not to hurry with this measure, but to wait so that it may include properties for daughters as well as adoption and other clauses. At that time he told us that he would like to hurry with the measure and that he would bring other reforms also. Therefore, these reforms are due for a long time and it cannot be said that we have not taken public opinion. Even this Hindu Code, as you know, is before the public for the last ten years and it is no use saying that public opinion has not been sounded. I think enough public opinion has been created and it is very wrong to say that very few women are supporting this measure. We have had many public meetings in various places and women from all over India are supporting this measure. On behalf of women I give my whole-hearted support to this Hindu Code.

**The Minister of Works, Production and Supply (Shri**

**Gadgil):** I heard the speech of my hon. friend Dr. Syama Prasad Mookerjee with great attention. I should say that it was not entirely unhelpful. He said two things, which appealed to me. One was that in the matter of social reform we should carry public opinion to the largest possible extent. Secondly he said that this was not a matter of politics, this was a matter in which every citizen of this country was interested irrespective of his or her political views. Because of these two things, I am somewhat optimistic and I am certain that if we are able to create in this House an atmosphere of give and take and of compromise we will be able to put on the statute book something about which individually and collectively we may be proud of.

Dr. Syama Prasad Mookerjee praised the Hindu culture and called it dynamic. I share that view. It is because Hindu culture has the genius of adaptation to circumstances, it is because that it is responsive to new trends that it has survived and it has been the pride and glory of us all. Today there is a greater need for the leaders of thought to consider how we shall attempt to progress further and how we shall bring the law in line with public morality. The old ways may not be effective in the modern times and therefore it behoves us that we must also have to resort to modern methods. There is no dispute about the fact that there are certain evils ; although I am a good Hindu and I will yield to none in my admiration for Hindu culture, still I am not blind to the faults which have crept in our life as a community. By adopting a Constitution with the objective of equality of status and social justice, we have taken a great responsibility. We want to inaugurate a society in which there will be perfect equality. If that is the objective, then surely that cannot be achieved by following old methods of shouting old slogans. We have established political equality by adopting the system of adult franchise. We want to secure social justice and remove as far as possible economic inequalities by erecting certain economic institutions which will secure a better standard of life for those who are down-trodden, by securing opportunities for the expansion of the personality of every citizen. And that is only possible in my humble view, by nationalising at least the means of production and securing an adequate standard of wages, controlling profits, and if at all private effort is to be given any place in the economic system by laying down that it shall be under the regulation and control of the State. In other words, by legislation we are trying to secure social justice and trying to remove economic inequality. If by legislation we have secured

political equality, if by legislation we are attempting to secure economic equality or at least to remove economic inequalities, it is only logical that by the same process, namely by legislation, we must try to secure social equality.

My friend Dr. Syama Prasad Mookerjee stated that by codifying the Hindu Law you are shutting out altogether those sources of Hindu Law which have been functioning from ages and which has secured the means of progress so far. I agree that the sources of Hindu Law are *smritis*, *shrutis*, *sadacham*, and one's own conscience. All that is true. But all that was good and valid enough when the political constitution or the political set-up of the country was different from what it is now. Even in the West it was considered that a change in the law could be effected either by legislation or by legal fiction which meant that the law apparently remained the same but in practice it underwent a change and by custom. Even in the West the modern tendency is to depend mostly or substantially upon legislation in effecting the necessary changes which will make the law to be in conformity with public morality. Law always follows public morality. Public opinion goes ahead and progresses because that is the life in the community, not being static or stagnant, continually progresses, continually proceeds, because the law of life. Therefore the legislation comes behind. But there should not be such a big hiatus between the two so as to endanger the happiness of the community. It is therefore the duty of every thoughtful citizen, of every person who has the interest of the community at heart to see that the time lag between the two is as short as possible.

Now, it is no good depending always upon the second method, namely of legal fiction, and allowing the judiciary to strain the meaning of plain words and asking them to try to bring the law in conformity with the prevailing opinion in the community.

The third method, namely that of custom, is, I should say, a misfit in modern circumstances. After all, custom was good when the legal power of the State was not adequate, was not sufficiently developed in order to enforce what was thought to be just and proper and what was thought to be in the best interests of the community. Now, in the modern world to talk of custom prevailing over law is a sort of anomaly. If the custom is prevalent on such an extensive scale I have not the slightest doubt that legislators will initiate the legislation and the custom will be incorporated and dignified into a rule of law.

That being so I am unable to understand the argument of my hon. friend Dr. Syama Prasad Mookerjee that we are doing something revolutionary and in such a manner that the normal sources of law which were available will be completely closed. It is not so. Whatever we have inherited we have so to say, instead of putting our inheritance into a number of banks consolidated the inheritance and put it in some bank which has the prestige and strength of a Reserve Bank, namely legislation. That is what we have done. In fact in the present Code as it is now before this House what is really done is that we are practically co-ordinating what is in existence—the present law—to the extent of eighty per cent. There is no doubt an element of progress to some extent. I will even concede that there is an element, which to some extent goes in advance of public opinion. But I want to ask one question to the Members of this House. Is it or is it not our duty not merely to think in terms of the needs of the present moment but to think in advance of our society, as we visualise or as we desire that it ought to be? If planning is good in the economic sphere why should it be bad in the social sphere? We are anxious that our society should be such. If that is the ideal on which we are agreed and on the assumption that we are agreed—because we have adopted it as one of the objectives in our Constitution—then we have to consider how we shall manage to take our society to that destination. Can we follow a policy of *laissez-faire* in this sphere or shall we think ahead, think in advance just have our target and gradually, through the mechanism of law, which in due course, become part and parcel of the community's life and arrive at the destination according to the schedule?

**Shri R. K. Chaudhari (Assam)** : That is questionable.

**Shri Gadgil**: If we leave it to non-official effort I have no doubt that in course of time, may be two generations hence, things will become as we desire now. But by that time public opinion would have advanced much more. In other words we will never be able to cut the time element between the growing public opinion and the legislation. I therefore say that if there is any element of advance thinking in this Code it is justifiable, and I would say that it is an act of wisdom.

Now the opposition to this Bill has been from several points of view. There are people who do not like any interference by the Legislature in these matters. There are people who think that the Parliament, or the Legislature of the country, has a right to interfere but not the present Parliament. They rather prefer that

the matter should be completely looked after and dealt with by those who will come after this Parliament is dissolved. So far as the first school is concerned I think, as was said rightly by Dr. Syama Prasad Mookerjee, it is too late in the day. Continually, in the course of the last 150 years, legislation after legislation has been passed by the Central Legislature—whatever the denomination of that legislature may have been—and all those things have become part and parcel of the Hindu community and its life. When I said that soon after the passing of this code, same thing would happen, my hon. friend Dr. Syama Prasad Mookerjee was not agreeable. He has accused us, namely the Members of the Treasury Bench of suffering from "Secularities". I should say, knowing as I do, his views of social reform, knowing as I do that he comes from Bengal, a province where social reform was first mooted, beginning with Raja Ram Mohan Roy and carried on by Kesav Chandra Sen, Tagore and other people of great importance and consequence, that I cannot believe that he is seriously opposed to what is being proposed in the Hindu Code, but probably he is suffering from 'electionitis' and if that is so, the cure and remedy will be provided for in the general election. He agreed that it is very difficult to say on which side is the public opinion. I think he is right. We might claim public opinion to be.....

**Pandit Malaviya** (Uttar Pradesh): Will the Government be prepared to make this Hindu Code one of the issues in the election?

**Shri Gadgil:** In spite of the Government, it has already become. The point is that it is difficult to say on which side the public opinion is. I want to ask in all humility one question to the hon. Members of this House. Has or has not the Government which still carried the confidence of this House some right to initiate social reform, not merely the right, but a duty enjoyed on this Government in terms of the clauses of the Constitution? You have given us certain directives; you have laid down the objectives. If we do not do anything on those lines, the electorate might turn round and say: Well you passed this constitution merely to fool us. Half the population in this country, namely, the women will say: You talk of social equality but where is that social equality. (*An hon. Member: Question*). I am sure the hon. Member will lose in his own house if he takes a referendum.

**Pandit Maitra** (West Bengal) : Does the hon. Member say half a dozen women of half the population ?

**Shri Gadgil :** I take a better view of my sisters than my hon. friend is prepared to concede. However, as my hon. friend said, the thing will be evident a few months hence. The point is that the legislature has pressed a number of statutes affecting Hindu life, Hindu marriage, divorce, in fact every aspect of the law. Therefore, we cannot say now that this Parliament has no right. The question whether this Parliament has a right or not. I have already answered. So far this Parliament has been considered to be competent enough to make a constitution for this country and it passes my comprehension to accept a proposition that this Parliament is incompetent to pass an ordinary law.

**Pandit Maitra :** The House was elected for giving a constitution.

**Shri Gadgil :** This very House passed the Constitution in which they passed the Chapter relating to transitory provisions. I do not think that my hon. friend Pandit Maitra objected then and said that this Parliament should have no right to govern from now till the new House comes into existence after the general elections.

**Pandit Maitra :** That is nobody's case.

**Shri Gadgil :** I am glad. What is after all that is attempted to be done ? As I said 80 per cent. is merely a collection of the existing statutes either passed by the Central Legislature or passed by the State Legislature. Dr. Syama Prasad was very eloquent over *Dharmic* marriage. I do not think that the Code prevents it. There is free scope from the Dhushyanta Shakuntala type of marriage to Prithviraj Sarnyugita type of marriage, namely from *Gandharva* to the *Rakshasa* type and all the eight forms can be practised by any Member of this House or by the public outside. This Code does not prevent lovemaking; it does not prevent eloping with bride's consent even against the consent of the parents. So far as eight forms of Hindu sacramental marriage are concerned, they are not affected in the least. What is the grievance? Is it because the word ' sacramental ' has been changed into ' *Dharmic* ' ? It was changed because all of us wished it; it conveys no meaning and therefore we said : let us take the word *Dharmic* which will fit in and convey some meaning, and that is why ' *Dharmic* ' was used.

**An Hon. Member :** It is a misnomer.

**Shri Gadgil :** My hon. friend Dr. Syama Prasad was very eloquent over the conception of Hindu ' marriage '. Those noble

sentiments I personally share. Marriage is something more than mere union of bodies, it is a co-partnership; it is joint endeavour for spiritual uplift; it is so to say a custodian of confidences and feelings which cannot be expressed in any language of the world. It is a noble conception: I do share that but at the same time it does happen that sometime an ideal is perverted. We find that in a progressive society things happen which have got to be taken notice of by those who are leaders of society and who are leaders of thought. I today, particularly on account of our contact with the West, we have somehow or other to go down in certain respects, it does not mean that our culture is less; it only means a challenge to us to reform. We have got the genius to adopt, we had to act, and therefore, those legislations to which reference was made by my hon. friend. Dr. Syama Prasad Mookerjee were quite justified.

What is this prevention of a marriage between a person belonging to one community and a woman belonging to another? Does it sound very well in our modern days, in the year 1951? Does it sound very well that a man because he is born in a particular community that he must remain outside the boundaries of the village perpetually? Does it sound very well that because a man belonging to a downtrodden caste today by his merit has assumed a position of great importance and is learned today, he must not be given the same social status, the same social welcome, the same social reception as we give to a person belonging to another caste? Is the *Varna* to be determined irrespective of *guna* or it has to be determined in the context of *guna* or in other words " accomplishment " ? That is a challenge to your sense of equality. If today the old ban against *Pratiloma* marriage is completely broken, you should welcome it. That is exactly what is being attempted. Why should there be such differences? If marriage is a matter of free choice, why should there be legal impediments in it? Why should a person belonging to one section or one community not marry a woman belonging to another? All these artificial man-made impediments must go. I do not remember any case in which the son of a *Brahmin* was born with a copy of *Vedas* or a *Kshatrya* born with a sword or a *Harijan* born with a broom. At birth they are all alike and at death they are all alike. In between the two, it is the duty of the society and the State to see that the same atmosphere of equality shall prevail. Anybody who argues against this, argues against humanity, argues against the very principle, which goes to make a man, and argues against self-respect. What is being

done here? Nothing contrary to our old traditions is being attempted. On the contrary, my accusation against my friend and colleague Dr. Ambedkar is that as he is growing old and old, he is growing less and less enthusiastic about social reform. Ten years ago, I think his language would have been more vitriolic; today he is the very soul of moderation. He said the other day, " Anyhow, with something changed here, something cut off there, and something added or subtracted, let me see the Hindu Code through because it will be considered at least one honest attempt by the present generation to put matters right ". He is so anxious. He is in a mood to be prepared to give and take. I would therefore urge on the Members who are keen on opposing to see whether that is not a situation, which we should avail of. I warn you that the next Parliament which will be elected on adult franchise is bound to be more radical in the matter of marriage and divorce...

**Some Hon. Members:** Leave it to the next Parliament.

**Shri Gadgil:** ..... although it may not be so radical to begin with in the matter of property. As regards, marriage, as regards divorce, I have not the slightest doubt, at least to the extent I know the mind and general outlook of those who inhabit my part of the country, Maharashtra.

**Shri Bhatt (Bombay):** Leave it to the next Parliament.

**Shri Gadgil:** We would have welcomed it. I would have agreed to that if there had been no duty cast upon us to see that whatever ideals and objectives are embodied in the Constitution should be given effect to as far as possible. It is because of this duty. I have agreed to support this code.

**Shri Bhatt :** The skies are not failing today.

**Shri Gadgil:** Will the heavens fall if it is passed? The sky is above and we are below. See what things are happening down here.

**Shri R. C. Upadhyaya (Rajasthan):** That is why it does not rain.

**Shri Gadgil:** Now Dr. Syama Prasad Mookerjee asked. " Why monogamy only for the Hindus?". I ask one question. If monogamy is a good ideal, does it become bad because somebody else does not follow? We talk of *Ram Rajya*. If there is anything in the life and career of the Great Rama, it is his *Eka Pathni Vrata*. I want to test your sincerity. Are you for *Ram Rajya* ? Then, give support for this part at least. It is no good talking about *Ram Rajya* when it suits you for election purposes and when it does not suit you....

**Shri R. K. Chaudhuri** : What about *Dasaratha Rajya* ? What did Dasaratha who was the father of Rama do ?

**Shri Gadgil** : That is only an improvement by a new generation over the old. Because he knew the troubles of having three mothers, he decided that his sons should have only one. That only shows how things progress.

**An hon. Member** : Was there divorce ?

**Shri Gadgil** : There was that custom.

Nashte mrute pravrajine klibech patite patau  
Patiranyatta vidheeyate

[ When the husband is lost, dies, goes to another land, becomes impotent or morally degenerate, another one is allowed.]

This proves it.

Dr. Syama Prasad Mookerjee's argument was that if it is good; let it be made applicable also to the Muslim community. I have no doubt that the Government either this or the Government that will come in power after the General Elections will not shirk to bring in a measure of that kind in which this particular law will be applicable to every one irrespective of religion.

**Some hon. Members**: Why not now?

**Shri Gadgil**: As a matter of fact, I know that in Bombay, when the bill for Monogamy was under discussion, the same line of criticism, which was adopted by Dr. Mookerjee yesterday, was taken by many a Member in the Bombay Legislative Assembly. I remember that the Government of Bombay stated through their Minister that a Bill of that character would be welcome. Dr. Syama Prasad Mookerjee somehow or other thinks that this Government is nervous and may not bring some thing which may offend the Muslim community. I ask him just to consider if 90 per cent. of the people in this country, who are Hindus, agree to this measure, will it or will it not strengthen the hands of the Government to pass a legislation for the remaining ten per cent ? By accepting this, you will strengthen the hands of Government. I might here mention one instance which I am sure you will recall: not you particularly. In 1930, when the first Child Marriage Restraint Bill was under consideration, to which subsequent amendments were moved by my hon. friend Mr. B. Das in 1936, when the original Bill was under discussion in this very Hall. Mr. Jinnah supported it, although the rest of the Mohammedan leaders who were Members here opposed it, on the ground that it was interference with the personal law of the

Muslim community. His words are, if there is a conflict between religion and public morality, the latter shall prevail, Mullahas or no Mullahas. You can find this out from the reports of the Legislative Assembly proceedings that this was his stand. If we are convinced that to have more than one wife is again public morality, I think, we must agree to monogamy. Monogamy in the first attempt at rationing in the social sphere so far. It is necessary in the highest interests of the community, in the highest interests of individual happiness that there must be monogamy and I have not the slightest doubt that the progressive elements in the Muslim community will accept it immediately. If the non-progressive does not accept it, it will equally be the duty of the Government to enforce it. I have no doubt about that, and if I ever am in that government, be assured that I will do my best to enforce it. That is so far as my personal attitude is concerned. My point is, if that is *Amrit*, because it is not taken by somebody else, does it become poison? I think this is an insult to the intellectual greatness of this House to argue on these lines.

Coming to the question of divorce, nobody argues that every married couple should go for a divorce. At the same time, if it is the duty of the State to see that there is less of social tension, and efforts are made to create an atmosphere in which every individual will have the right to have maximum satisfaction and happiness, then, it is the duty of the State to create conditions for having judicial institutions or legal institutions of that character. Eighty percent, or more in this country have something like customary divorce. They are not worried. But, in the five per cent. or ten per cent. or whatever the percentage may be, on account of marriage conditions or on account of several other factors,—probably the modern woman is more intellectual—if she for one reason or another finds that it is not possible to live with a man whom she has married, then, marriage should not be a life sentence. It should not be that there will be no happiness unless one of them dies. No doubt, such cases may be few but the exceptions are there. Therefore, there must be some provision made for the same. You may make it strict ; you may not make it as cheap as in the West but speaking for myself, this is the most orthodox and reactionary law that you are laying down. Left to myself, I would have said that incompatibility of temper was enough ground to dissolve the marriage. After all, what is the assumption under the provisions for divorce? It is that the parties cannot be happy. Should they

go through this tortuous process of adultery or alleged adultery or cruelty or desertion? What is the idea? Should they always go to a hotel and have evidence of hotel bills, etc.? I think it must be a straight and honest and genuine affair that those who cannot agree, let them part. That will secure maximum happiness. People think that this will end society. But if this custom is available in 90 per cent. of the population and in spite of that society has continued to progress all these generations, I do not think the extension of it merely to the remaining five or ten per cent. is going to change the integrity of society. On the other hand, the consequences that will follow will all be for the good. In fact restricting marriages and all the old injunctions that you must not marry in the same *gotra* have good reasons behind them. These restrictions were due to considerations of eugenics. If that is the case with those injunctions, then these will have greater application if the boy or girl marries outside the caste. Then there will be greater virility in the race; better type of persons will come into existence. This is a matter, which must be considered in an atmosphere of scientific understanding. This is not the time nor the occasion to dilate on this aspect of the question. I will only add that behind these injunctions against marriage between *sapindas* or *sagotras* there were eugenic considerations. They must be reassessed.

**Shri A. C. Shukla** (Madhya Pradesh): An old man marrying a young woman, is it according to eugenics or not?

**Shri Gadgil**: You should certainly stop an old man marrying a young girl.

**Shri A. C. Shukla** : What will be the position of the child born to an old man and a young woman ?

**Shri Gadgil** : It will be as healthy as possible. The point is, all those laws or customs which definitely have affected the progressive character of Hindu society ought to go. Dr. S. P. Mookerjee made a reference to *Brahmo Samaj*, *Sadhanan Samaj*. From Raja Ram Mohan Roy, to Ranade, Tilak, Agarker there is a galaxy of social reformers of whom we are all proud. But why should the process stop there? If what was done in the past was good we ought to follow the same principles of progress. And if we follow that same line of advancement, why should you be afraid now? Why should you think that because Manu was great, therefore there cannot be any man as great as Manu in the centuries that may roll after his death? I think Mr. Ahmad is as great or as good as Yagnavalkya, only without a *jenuva*. Otherwise he is as good an interpreter. And Dr.

Ambedkar is as great as Manu or Gargya.

**An hon. Member :** He is Manu.

**Shri Gadgil :** And I am as good as any other old citizen. And why should we feel that the present generation cannot undertake the task of social reconstructions? India could not be an integrated unit under one flag during ten or eleven centuries. But if that task was achieved by this generation, is not this generation competent to do something in the social sphere to make society progressive? I want an answer to that question. You praise us and praise yourselves for having done something great in the political sphere. Why are you afraid of achieving something in the social field? Why do you have this inferiority complex ? Of course what was done by Manu was good. But—

“ tatashhya koopoyamiti bruvana

kshharam jal kapurushah pivanti”

Because this well was dug by my great great grandfather, and although the water of it is saltish, I must drink it. Well, that is not my outlook.

**Shri R. K. Chaudhuri:** Then why not throw away your sacred thread?

**Shri Gadgil :** I have thrown it away. Look here.

**Pandit Malaviya :** I believe the Hon. Minister puts it on now and then whenever he feels like it !

**Shri Gadgil:** No, nothing of the kind. And since it is a matter concerning me, you will kindly permit me to dilate on it for a moment.

**Shri Brajeshwar Prasad (Bihar) :** Sir, on a point of order. Is it parliamentary for the Hon. Minister to show the House his tummy?

**Shri Gadgil :** Well, it was appreciated anyway.

**Mr. Deputy Speaker :** I am glad this point was raised. I can only say that it is not proper for questions to be put whether a person is wearing this or that, leading to unnecessary complications.

**Shri Bhatt :** I want to know one thing. Can he have *Yagnopavita* at the time of *Yagna* ?

**Shri Gadgil:** I am prepared to satisfy the curiosity of the hon. Member.

**Mr. Deputy Speaker:** The Hon. Minister need not discard his *Yagnopavita* to support the Bill. He can have it and still support it.

**Shri Gadgil :** Some years ago when I was in Thana Jail and

when I started thinking about Hindu religion, I thought I was not a good *Brahmin* and could not be one merely because I had a *Jeneu* and I discarded it. And only when I am a good Brahmin, even for a moment, I will put it on, and this I did when I attended the Somnath installations ceremony. Then I felt a moment of inspiration. I felt my whole being ennobled when I was there and I put it on for sometime. Later on I threw it away because I came from Heaven to the dust below. I shall only justify a *Brahmin* using the *Jeneu* if he is following all those great ideals, which are enumerated in the Gita.

*abhaya, ahinsa, asteya, aarjavam*

(fearlessness, non-violence, not to commit theft and straightforwardness) etc. Otherwise there is no good having a *Jeneu* and doing all sorts of things.

The point is whether we are competent to make any changes, the whole history of Hindu society shows that it is continually progressing from stage to stage. Otherwise how do you explain the numerous *Smritis*, one *Smriti* laying down one thing and another *Smriti* another? How do you explain this ? Society is continuously progressing and something has got to be found which is appropriate to the *Sadacham* or *Vyavahara Dharina*. And the definition of *Sanatana* Dharma, as given by a great Shastri is:

*sanatanah nitya nutanah:*

[The eternal is always new.]

Change is the watchword of Nature. Change or perish. We have a progressive society and it is a dynamic society, as was pointed out by Dr. Mookerjee and so we must continuously adapt ourselves to the changing circumstances. Of course, that does not mean that there is nothing steady or nothing stable.

Pandit Maitra : Where in Sanskrit literature is the word *Sanatana* defined as the Hon. Minister has just now given out ? *Sanatana* means.....

*sadabhava iti sanatan* : It means eternal.

That is the etymological meaning of the word. That is the grammatical meaning of the word.

**Shri Gadgil:** I am not prepared to accept the grammatical interpretation of the word *Sanatana*.

**Shri Bhatt :** Kaka Sahib can have his own interpretation.

**Shri Gadgil:** That is not of lesser importance. Kaka Sahib also knows some Sankrit. The point is through out history, there is the Hindu community the tendency to progress. Why should we stop now? Modern conditions require that changes should be

effected by legislation and not by custom. If to-morrow something else is required, the leaders of the day, through the Legislature, will effect that change. I agree that this matter which must be considered in an atmosphere of calmness and understanding. If we agree that there are certain evils, why should we not remove them? I remember while speaking on the amendment Bill of my hon. friend Shri B. Das regarding the Child Marriage Restraint Act. I gave figures from the 1931 census and said that there were 1,300 widows below the age of one year. Is not that an evil? And girl widows below the age often there were millions. And if you prevent them from re-marriage, just consider what will be the effect of it on society? And only good has come out of the legislation that was passed. Today the position is that the average marriage age has gone up considerably. The problem now is not of marrying earlier, but of marrying at all.

11 A.M

There was threat of opposition to this measure in 1930 and so great was the threat that all the communities were combined against the measure. I remember the description given at that time; that before the Act was brought into operation thousands of children were taken from Calcutta to Chandernagore and married there, because it was not part of British India, that thousands of children were taken in the midstream of the Indus and married, because there was no extra-territoriality so far as this Act was concerned at that time. This element of extra-territoriality was incorporated at the suggestion of Mr. B. Das. The point is that there are undoubtedly evils about which there is no dispute and it is not anybody's desire to nurse or keep those evils going on. As to whether the remedy should be stringent or less stringent is a matter on which the Members of the opposition can certainly have a discussion with my Hon. Friend Dr. Ambedkar and a *via media* found out. What I suggest is let this House take some steps towards progress and let us go down in history that in spite of real or created opposition this House had the courage to take at least one step towards the reform of Hindu society. That would be the greatest tribute to you individually and collectively and I do hope the whole House will rise to the occasion. That does not mean that you should accept whatever is suggested nor that you should reject everything. Let us not have a closed mind: let us have an open

mind. Let us agree that there is evil in society and let us agree that some remedy must be found. This is all that I have to say and I do hope that in that spirit the House will respond to the Hindu Code introduced by my Hon. Friend Dr. Ambedkar.

**Mr. Deputy Speaker :** Before I call Pandit Kunzru to speak I might say that I have been hearing speeches as if on the first reading and not on clause 2 which is before the House. Clause 2. consists of four sub clauses and the amendments refer to them. Not many Members have addressed themselves to the clause proper. Evidently they want the House either to accept the option or reject the measure. In fact I thought at one stage of accepting closure today.....

**Several Hon. Members:** No, no.

**Pandit Maitra :** It is a most important clause, the very life-blood of the whole Bill.

**Dr. Ambedkar:** I am prepared to accept closure even on the tenth day.

**Pandit Maitra:** Do it on the 15th day. You make its application optional and we will pass it straightaway.

**Mr. Deputy Speaker:** On this clause at an earlier stage about 17 or 18 members have already spoken.

**Shri Naziruddin Ahmad (West Bengal):** All that has been forgotten entirely.

**Mr. Deputy Speaker:** That is why I have allowed references to all clauses. The discussion has been on the details of the Bill as a whole and not absolutely confined to clause 2. We must see to the end of the discussion some time. I therefore, request hon. Members to confine themselves to those matters, which arise out of clause 2 and the amendments to the clause. I do not want to curtail discussion but this kind of discussion will be endless. It so happens that whenever I call upon Pandit Kunzru to speak I have to make some suggestions to the House but they are not intended for him. Particularly.

**Shri R. K. Chaudhuri:** The Hon. Minister who spoke just now has to be answered and should we not follow him?

**Pandit Maitra:** We have now been told that this Bill will be proceeded with in regard to its first two parts. You will realise easily that clauses 2 and 4 are the two fundamental clauses in the whole Code. After passing these two you can go ahead at the speed of the Frontier or Punjab Mail. The main point is the question of the applicability of the law to the communities mentioned. You should not be carried away by the mere fact that 16 or 17 Members have spoken. You are going to legislate

for 30 crores of people and therefore a momentous measure like this has to be given serious consideration. If the Bill has been taken spasmodically now and then it is no fault of ours. They introduce it and at one stage when they meet with opposition they put it by. Then they gather strength and come back again. That is no fault of ours. If they had taken it up in a special session the House could have devoted its whole time and we would have been in a better position to know what we said on one day and what are our contentions now. It is not the old bill before us: It is a new thing that has come before us.

**Sardar B. S. Man** (Punjab): Since you, Sir, mentioned the closure motion and there is the threat thereof may I request you that those Members who have moved amendments as regards certain communities should be given their chance so that they may explain their view point. I hope closure will not be accepted by you till we have had the chance to speak, that is those of us who have moved amendments.

**Mr. Deputy Speaker:** My difficulty was that I looked up for those gentlemen who had tabled amendments. Others who had already spoken with respect to their amendments I did not call. I picked out four of the hon. Members who had tabled amendments and had not spoken so far. I was looking round for them to stand. The whole of yesterday none of them got up from their seats. Therefore they cannot say that no closure can be accepted until they are called to speak, if they are not inclined to stand up. Today the hon. Sardar B. S. Man sent me a chit saying that he was anxious to speak, because yesterday he did not catch my eyes.....

**Sardar B. S. Man:** Even yesterday I stood up.

**Mr. Deputy Speaker:** The general principles of the Bill have been already discussed fully in the consideration stage. With respect to this clause, whether it ought to apply immediately or it should be optional are matters with regard to which amendments have been moved. But going into the entire framework of the Bill and whether it ought to be accepted or not on the analogy of some other pieces of legislation, are not, I think, quite relevant.

**Shri J. R. Kapoor** (Uttar Pradesh): So far as I am concerned I did not stand yesterday to catch your eye in deference to your direction or view that you would like to give an opportunity to those who have moved amendments after those who had not spoken on the previous occasion. That was my reason.....

**Mr. Deputy Speaker:** Even if he stands I do not propose to

call him.

**Shri J. R. Kapoor:** Not even in respect of the new amendments I have moved?

**Mr. Deputy Speaker :** I have tabulated all the amendments now and they have been circulated. No new amendment has been given by the hon. Member: they are only repetitions in another form of the amendments he had already moved. After I finish with the others I will consider those who have already spoken. But as a rule I would not like to allow any hon. Member to speak, who had spoken already. Somehow Dr. Deshmukh was called yesterday when I was not in the Chair. If I had been here I would not have called him.

**Shri J. R. Kapoor:** My amendments fall into two categories: one old and the other entirely new.

**Mr. Deputy-Speaker:** I shall come to that later, after others have been given an opportunity.

**Shri Bhatt :** Sir, excuse me. I am sitting opposite to you but am not catching your eye. I have been getting up since yesterday. You said that those who have given notice of amendments did not stand up. May be, there is some forgetfulness on your part.

**Mr. Deputy Speaker:** Order, order, the hon. Member need not cast aspersions, that I had not seen him or I did not notice him. Hon. Members have no patience to sit and await their chance. When they come they expect to be immediately called and if they are not, they go away to the lobby. You cannot expect me to bear all this in mind. When I make up my mind which hon. Member to call next and if he is not in his seat I am entitled to ignore him. I cannot call them by the order in my mind one after the other. That is not the practice even in the House of Commons. I did not find the hon. Member standing up when I was in the Chair. I have a note here. I made a note of those Members who have not already spoken but have tabled their amendments. But they have no patience to sit here and the moment they are not called they go away to the lobby.

**Pandit Maitra:** There is absolutely no dissatisfaction at what you, Sir, have done. I want to assure you that we have the feeling that we are all getting an honest and fair deal—absolutely impartial deal—from you. We have no feeling against the Chair.

**Pandit Krishna Chandra Sharma (Uttar Pradesh) :** May I suggest that the words used by Shri Bhatt may be withdrawn ?

**Pandit Maitra :** He never meant any objection.

**Shri Bhatt** : With your permission. Sir, I want to clarify the position. All I wanted to bring to your notice was that I have been standing, but perhaps you did not notice it.

**Mr. Deputy Speaker**: I shall come to hon. Members who have not spoken and who have tabled amendments next.

**Pandit Kunzru** (Uttar Pradesh): If I may say so, I agree with you. Sir, that we expected that the debate on the clause. But important questions of concerned with the merits of the clause. But important questions of principle were raised yesterday and I see that the minds of hon. Members are coloured by what was said in the course of yesterday's debate. It is therefore unfortunately necessary to say something on these points so that the prejudice created against those parts of the bill that we are going to discuss may be removed.

My hon. friend, Shri N.V. Gadgil has dealt admirably with some of the points that were raised yesterday, and I venture to say something more on this subject because I feel that what was said yesterday ignores not merely the spirit of Hindu Law but the changes that are already taking place in Hindu society. In considering the Bill before us it is not enough that we should confine our attention to the provisions of the Bill. It is necessary that we should understand the character of the society for which we are legislating; Its most important character is change; it is in a state of transition. To mention only one important factor that is vitally affecting our society, a great deal of awakening has taken place among our sisters during the last twenty-five years. They have happily become conscious of their just rights and they are making organised efforts in support of their just demands. It is partly to the credit of these educated and enlightened women that this Bill has been placed before us. But we have to add to this the fact that education is fast growing amongst women.....

**Shri R. K. Chaudhuri** : You mean Western education ?

**Pandit Kunzru** : The education that you have received and in spite of which you claim to be a good Hindu. Our sisters are receiving the same education and there is no reason to suppose that they will become denationalised or adopt an attitude of disrespect towards their religion or culture. Our women are receiving education in ever-increasing numbers. They will enjoy the franchise on a footing of equality, complete equality, with men. Is it conceivable that in a society that is being moulded by such forces inequalities between men and women will be tolerated for any length of time? Those who use the name of religion in order to defend social inequalities and social injustice

are doing the worst service they can to Hindu religion. There is nothing, I venture to say, in those provisions of the Bill that we are going to discuss in this session that is in any way in conflict with the best principles of Hindu Law or with the spirit that has always under laid it.

What are the main features of the bill so far as we are going to discuss it now? They are monogamy and divorce. As regards monogamy, my hon. friend. Dr. Syama Prasad Mookerjee said realistically yesterday that in view of what had taken place in the past it was too late today to contend that this Parliament was not competent to undertake legislation in respect of social reform. He also said that he would be prepared to support monogamy if the Muslims were brought within the purview of the Bill. I remember distinctly that when the general principles underlying the bill were discussed, some speakers expressed the fear that Hindu society was being compelled to imitate the Muslim society in respect to inheritance. We know that among Muslims daughters have a share in the father's property. Yet, we were not in favour of assimilation between Hindus and Muslims in this respect. What right have we now to ask that no legislation should be undertaken in respect of Hindu marriage unless it applies as much to the Muslims as it will do the Hindus? People who are not prepared to allow women to have a share in the property of their fathers have no right to ask that the law relating to marriage that is applied to the Hindus should in all respects be applicable to the Muslims also.

The arguments that have been put forward now were carefully considered by the Hindu Law Committee. I should like to remind the House of what this Committee said with regard the objections that had been urged after considering them one by one, it came to the conclusion that they were either far-fetched or had no relation to existing facts and then said:

" We have accordingly decided to retain the provision for monogamy in the draft Code. It will prevent the husband from deserting the wife at will and contracting a second marriage. There is a substantial body of evidence before us that cases of desertion and re-marriage are increasing and this problem is best solved by enacting monogamy as a rule of law."

I think that the observation of the Committee has great force and those who oppose monogamy on any ground must deal with the concrete reasons put forward by the Committee in favour of proposing monogamy. The Committee drew attention to the fact that monogamy had been enforced by law in the

State of Bombay. Legislation was undertaken there four or five years ago to prevent polygamy amongst Hindus. We can now say that there is a similar law in the State of Madras. Indeed the State of Baroda where there was a Hindu ruler and whether the large majority of the people were Hindus passed a law many years ago in favour of monogamy and divorce.

**Shri D. D. Pant** (Uttar Pradesh) : The Ruler violated it.

**Pandit Kunzru** : If the Hindus in all these places have violated Hindu Law, then where can you find real Hindus—only in this House ?

It was yesterday that the demand was put forward that the Bill should be made permissive, that is, the enforcement of the provisions should be left to the States. Now, here are two important States in which the principle of monogamy is already in force. There are other parts of the country also, for instance, the district of Malabar and the State of Travancore-Cochin, where legislation has been passed to prevent polygamy amongst Hindus. In view of this and in view of the fact that it was freely admitted in the debate yesterday that in a large majority of cases, in an overwhelming majority of cases, the marriages were monogamous, on what ground can anybody now ask that provision relating to monogamy should be made permissive ? This is the only provision of the bill that is not permissive but compulsory, and it is compulsory for a very good reason. It will be compulsory, but that principle appears to have been accepted by Hindu society at large. In those places where it prevails Hindu law has not been subverted. There are as good Hindus there as there are amongst the Hindu Members of this House. I think therefore that my hon. Friend Dr. Ambedkar is on strong ground when he asks that we should lay down as a rule of law that monogamy should prevail amongst the Hindus in this country.

The next point that I should like to deal with is divorce. Here too it is asked that the provisions should be made permissive. But they are already permissive. Unhappy couples will not be under a compulsion when this law is passed to rush to a court of law and ask for immediate divorce. It will depend upon them whether they will take advantage of the provisions of the law. What more can be done in order to remove fears and in order to enable only those people who find the existing conditions intolerable to seek either separation or complete divorce ? The Hindu Law Committee, dealing with this point, said:

" From the evidence adduced before us we should think that

there are thousands of women in British India who have been deserted by their husbands."

Then it goes on to say :

" Many hard cases were also brought to our notice by other witnesses in which re-marriage was both desired and possible but could not be effected by reason of the existing law. The number of these cases may not be relatively large and reckoned in terms of percentage the problem may not appear to be a formidable one. But as we have already stated there are thousands of such cases in India and if even a small proportion of these women desire a divorce with a view to getting themselves remarried the question is whether the law should say up to them ' nay '. Evidence was brought before us that in many cases re-marriage is quietly celebrated and that society tolerates and recognises such remarriage."

Here, again, the facts are incontestably against the view that there is no need for having a provision for divorce in our marriage law. No one is compelled to take advantage of it. There is no reason why for the sake of the patient sufferers, those who seek relief should be denied. I have already referred to some of the States where monogamy is legally in force. I may add that the law allows divorce in all the States mentioned by me in respect of monogamy. Now what has happened to Hindu society there? Has the sanctity of marriage become less than it was before? Do not the Hindus there regard the tie of marriage as a sacramental tie? Have they no respect for Hindu religion or Hindu culture?

**Pandit Maitra** : The sample is here.

**Pandit Kunzru** : I should very much like to see a discourse between my hon. Friend Pandit Maitra and the people of the States mentioned by me on this point. He will not find it easy to convince them that they are inferior to him in their regard for Hindu culture and Hindu society.

**Pandit Maitra** : Then leave it to individual areas to legislate : why force it here?

**Pandit Kunzru** : I have already pointed out that there are so many areas in which this law is in force. In the second place I have taken pains to point out that the provision will be permissive. What do you mean by asking that it should be permissive?

**Pandit Maitra** : Make it optional for all.

**Pandit Kunzru** : It will be optional for unhappy partners to

seek relief under this law or not. Nobody is going to compel them either to separate or to seek divorce. What more do you want?

The law in Baroda has probably been in force for a much longer time than in the States of Bombay and Madras. But it appears from the evidence given before the Hindu Law Committee that both in 1940-41 and 1941-42 the number of suits by persons belonging to castes in which custom does not allow divorce was three only. My hon. friend Dr. Syama Prasad Mookerjee said yesterday that if 90 per cent. of the people could already get divorce, where was the need for bringing the remaining ten per cent. who were following a higher law and who regard marriage as indissoluble. Well, I am sorry that he is not in his place. But I should like to point this out to him.

Besides, we all know what is happening in Hindu society. If a husband drinks and beats his wife, or deserts her, is this a sacramental act? Is this in accordance with the sacred character of Hindu marriage? An hon. member behind me ask: " Why not check it? "

**Pandit Maitra** : There are also wives who beat their husbands.

**Pandit Kunzru** : I do not say that the wives are impeccable. Wives have their own faults, but the law will apply not merely to wives but also to husbands. In view of this it is idle to claim that the upper strata of Hindu society, that is men belonging to the *Brahmin*, *Kshatriya* and *Vaishya* castes have a higher ideal than the members of the other castes.

Again, it has been said that this Bill has caused a great deal of perturbation in Hindu society. I find that this is due to the fact that people are misinformed with regard to the provisions of the Bill. When the provisions are explained to them a good many of their misapprehensions disappear, and I have no doubt that if those who assiduously voice the fears of the people in this House will take a little trouble to explain what its provisions really are.....

**Pandit Maitra** : Let the government do it.

**Pandit Kunzru**: .....much of the dissatisfaction that exists will disappear.

Government is doing what it can to spread a correct knowledge of the provisions of the Bill, but is it not the duty of those people who believe in truth and in the spirituality that underlies Hindu law to take a hand in this good work? Why should they not seek to remove the prejudice that has been

wrongly created against the Bill?

**Pandit Maitra** : Leave it to them to decide.

**Pandit Kunzru**: My hon. Friend disregards facts completely. I confess that I am powerless to convince him....

**Pandit Maitra** : It is my misfortune also.

**Pandit Kunzru** : .....if he continues to shut his eyes to facts.....

**Pandit Maitra** : I am looking straight at them.

**Pandit Kunzru** : .....and says that nobody in India has before the introduction of this Bill ever heard of the words monogamy and divorce.

**Shri R. K. Chaudhari** : Monogamy means monotony.

**Pandit Kunzru** : I think that those who are supporting the principle that underlies the provisions that we are considering, who are trying to bring about complete equality between men and women, who are trying to renovate Hindu society, who are asking it to go back to the great principles that once made it great and the envy of the world, are rendering the greatest service they can to Hindu religion and culture. I hope that they will persevere in the path they have chosen themselves and make Hindu religion as respected throughout the world now as it was some centuries ago.

**Shri Bhatt** : (*English translation of the speech*) Sir, I am being asked to speak in English, but as ill luck would have it, I cannot speak in English. I cannot express my ideas and feelings as suitably in that language as I can in Hindustani. I may be excused for that.

**Shri R. K. Chaudhari**: Sir, we do not understand high-flow Hindi and we cannot follow if the hon. Member speaks swiftly. We can understand if he speaks slowly.

**Shri Bhatt** : I have not taken the floor simply in order to reply to what the Hon. Minister has said, but I am here to express my own ideas. We are going to perform a big task and ours is a Herculean endeavour. We are descendants of Bharat and Bhagirath, Rama and Krishna, Manu and Yagnavalkya. The systematisation and codification of Hindu Law in such a way that we may be in a position to apply, it to our lives, is a Herculean effort. As Shri Gour has said about England :

" Various attempts have been made to codify the laws of England but the attempts have so far failed."

England is a progressive country and yet its laws could not be codified. In our country where there are so many complications and anomalies and customs have a very heterogeneous

character, the magnitude of our task is indeed great. As Hon. Minister Kaka Sahib Gadgil said, if we do not perform this task, how would we be able to bring the divine Ganges and Yamuna to the plains as Bhagirath did ? I congratulate him on his courage. We also want to help him and not impede his efforts. I want to say that things should be done at an appropriate time and by suitable methods. I do not say that Hon. Pandit Kunzru wants to deprive the Hindu *Shastras* of their sanctity and importance but at the same time I do not like that we should drift towards materialism and see things only from the point of view of our convenience. We do not want to make his law only to prove its ineffectiveness in the long run. Our Hindu *Shastras* have also been amended. Today they call Dr. Ambedkar as Manu, Shri Gadgilis called Yagnavalkya and Shri Gadgil can give any such name to Shri Naziruddin Ahmad also.

Shri Syamnandan Sahaya (Bihar) : Call him Narad. Shri Bhatt : It is difficult to say today whether we have made any progress or have gone back. I would say that from the point of view of food, clothing and living, we have the same standard, which our ancestors had during the Mughal period. Is our standard of living the same as obtained 150 years back? Do we have the same facilities, which we had thirty years back? Applying this standard, we cannot say that we have progressed. Can we say that we have made progress simply because we have passed more laws? Or shall we say we have progressed as we have become more healthy and courageous and have become true Aryans? This is a difficult question; I cannot answer it not have I the time to do so. It is a new subject and I do not want to go into its different aspects. I shall try to confine my remarks only to my amendments and clause 2. Our *Smritis* and *Shastras* have kept changing according to times. I agree with the Hon. Minister in that we have our *Dharma Shastras*. Shri Maitra may interpret them in one way. Shri Gadgil in another ; Dr. Ambedkar may expound them in his own way and my interpretation may be different from those of all these gentlemen, though I am not a scholar of *Shastras* ; all I want to say is that our religion, our *Smritis* and our *Shastras* are eternal. Changes have taken place in them and new things have been incorporated in them at times changed. They change with time and place and never lag behind. Without showing disrespect to the scriptures of any other religion or community I want to say that the Hindu *Shastras* and tradition live to this day ; that is why Hinduism has kept place with time. It is in that sense that I consider them as

eternal.

**Pandit Malaviya:** After the code has been passed it will not remain so.

**Shri Bhatt:** We don't want to frighten them. I remember that the Hindu Code Bill Committee prepared a draft of the Bill and it was presented to the House in April, 1947. In the statement of Objects and Reasons was this sentence: " There is a growing public opinion in favour of codification and a uniform code." Besides this our hon. Kaka Saheb Says," It is difficult to say which side is stronger "

**Mr. Deputy Speaker:** In the Official Report it will be difficult to understand who " Kaka Saheb " is.

**Shri Bhatt:** I admit the truth of what you say. As Kaka Saheb *i.e.*, the Hon. Minister Shri Gadgil said just now and others said yesterday, that the English knowing people and even those who do not know English but have progressive views, agree to this. But if this is true, why do so many demonstrations take place against this Bill ? Both sides demonstrate. Around the Parliament House, those who are in favour of the Code Bill and those who are against it, both of them demonstrate. I know both sides have scholars and intelligent people among them and also men and women.

**Dr. Ambedkar:** They are all lunatics. They are out because our lunatic asylums are too small.

**Shri Bhatt:** Then Hon. Dr.. Ambedkar says that those who are opposing the Bill are lunatics. I beg to submit with respect that I want to stand against this statement. If you call them lunatics, they would call you a hundred times bigger lunatic. I want to emphasise that if a person calls his opponents lunatics, he is living in an age with which we are fed up. During British Rule, such Government was here as neither listened to, nor tolerated what others thought. I don't agree to Dr. Ambedkar's statement, who has been compared to Manu, that his opponents are lunatics and are out because our lunatic asylums are too small. I agree.....

**Shri R. K. Chaudhari :** May I say that we are losing all the humour because the hon. Member is speaking in Hindi, Those who know Hindi understand but we are not following him at all.

**Pandit Malaviya:** It is not humour but grim humour.

**Pandit Thakur Das Bhargava (Punjab) :** My hon. Friend does not understand, otherwise he would be somewhere else according to Dr. Ambedkar.

**Shri R. K. Chaudhari:** I understood Dr. Ambedkar to say that

those who were opposed to this Bill are mad. Is that in order ?

**Mr. Deputy Speaker:** He has not said so.

**Shri Bhatt:** I was saying that Dr. Ambedkar may hold certain views and my views may be different. After 1947 this Bill was sent to a Select Committee, which presented its report in August 1948. After that this bill again came up for discussion. As you are aware sir, our Government does not want to hurt anybody, nor does it want to do anything, which might create a sensation among the people. So our Government consulted *Pandits*. Dr. Ambedkar also listened to what certain *Pandits* had to say. He gave them an opportunity to put forward their views, though not to their heart's content, but they were given an opportunity all right. I do not know whether he accommodated their viewpoint or not, but after that he put forward something new and amended it. Now he is bringing forward new amendments every day and that is good; there is nothing wrong in it. He wants that he should bring round his opponents, and taking their grievances into consideration, put forward an agreed legislation. With this idea in mind the Government have introduced this Bill and we are discussing clause 2 of the same. This Bill contains many different things, but if I have rightly understood, for the time being only two parts, *viz.*, those relating to marriage and divorce are to be taken up. If we are going to take up only one thing as suggested by Shri Gadgil, who has expressed the hope that it would demonstrate our might. I would request them to stop there if they have any idea of what is practicable. I repeat what I said in an earlier speech ; and that is the Government should wait till the next House is elected within four or five months. Those who will get elected to the next House, will put this question before their electorate, before the people. This has become a burning question and it will remain before them. Put it before the people and the members of the next Parliament will get a mandate from them on this question or will tell their electorates what they would do when they sit in the new House. While speaking on the Child Marriage Restraint Bill in 1929, Qaid-e-Azam Jinnah had said, " It is necessary that children under 14 should not be allowed to marry. If my electorate does not agree to this, I will resign from the House, and they may elect somebody else to represent them ". We should be definite about what we want. The idea that we should not antagonise anybody, now that we have reached the last stage, should not enter our calculations. The best possible draft of the Bill should be put forward before us and we should clearly know as to how

far we are to go. Why should you put only one thing before us ? We have to scrutinise every clause. Dr. Ambedkar has become so impatient that he wants to bring forth a child, no matter if it is blind, devoid of limbs or unable to move. What he wants is a son so that he may have somebody to offer *Pindas* to him.

**An hon. Member:** So that he may get deliverance?

**Shri Bhatt :** Pardon me. May he live for a thousand years; I am speaking only figuratively. If Dr. Ambedkar and Pandit Jawaharlal feel so strongly about passing the Bill, we will bring round those who have been termed as lunatics. Use whatever methods you like to bring them round, to repress them, we are with you and may be we would also come under your influence but please refrain from passing a legislation that is incomplete, invalid and base. On the contrary it should be lofty. Why do you say that you do this and you do that just to accommodate us? Don't do it if you think it is not right. If we are elected to the next House we will say with more courage that we are armed with the mandate of the people on this question and we are not going to bow to the directives of anybody else. We will bow only to the will of the people. I am a quiet man and do not wish to prolong my remarks on this point. A couple of days back I had occasion to go to a factory. People working there asked me what all this fuss about the Hindu Code Bill was. I countered that question with the remark as to why they were afraid of this measure. They said " This is going to put an end to our religion, there would be chaos in our society and we will deteriorate." So I had a talk with them. Many of them were intelligent people, who had read the draft Bill. We should not think that those who are opposing this Bill are doing so without understanding it. They referred to the provision about divorce and said that these days they can get divorce more easily according to the prevalent customs. " Why should you ", they said, " drag us into the court and make us say that a woman is immoral and make the women accuse their men of adultery? It is better to discuss these thing in our *Panchayats* and people who understand the truth about a particular couple will separate them." Now, this needs a lot of consideration. Will Dr. Ambedkar argue that divorce rules, wherever they operate are very lenient and should not be so because that will endanger Hindu religion? Hindu religion is not endangered because of that. There are others who say that Hindu religion will be endangered if this Bill is passed. We have to tax our brains to see which side is right. Everybody has to think. Then I asked those people in the factory

as to what else they had in their minds. Then they mentioned the problem of the share of the daughter in her father's property. What I want to show is that those who are opposing the Bill are not lunatics and that they are not acting without intelligence. Some members of the *Adarsh Mahila Sangh* came to me and put the same question. Now they are also wise and reasonable. No doubt, the hon. Member Shri Renuka Ray, Shrimati Durgabai or other lady members are wiser and more well-read. But that does not mean that women outside this House do not understand the significance of things or, as somebody said, that they are mere blockheads. The ladies I referred to just now, started discussing and said that we should do nothing that may bring down the whole structure of society. We have opened a way by passing the Civil Marriages Act. Persons marrying under this Act can also give divorce. Why should we go further? Let our customs remain as they are. We do not say that a certain person should not do a certain thing. Gradually people would begin to understand.

Shri Kunzru has spoken about monogamy. People don't have enough to live on. In many cases it is difficult to support one wife even, how can everybody support two? Muslims are allowed to have as many as four wives, but has everybody four wives? In very few cases, men have two wives and very rarely one has four. I could not obtain census figures in this respect. Our Statistics Department is still far behind. The question now is, how Muslims came to be allowed to have four wives at a time. Hazrat Mohammad fought the battle of Ohad in which a large number of men were killed. The result was a preponderance of women over men, for the protection and upkeep of whom those who could support upto four wives were ordered to take that number of women as wives. This thing has happened in Germany and France at different times. In our country there is more or less parity between the numbers of men and women. The number of women is some thousands less than that of men.

(PANDIT THAKUR DAS BHARGAVA *in the Chair*)

But if, unfortunately, the number of women goes up by two crores, a new legislation will have to be passed to meet the new situation. I am going into detail to show that our laws were made according to the demands of time and place and even now they are being made according to the same standards. Dr. Ambedkar wants a legislation of that sort but that legislation should have

the effect of healing. In our country marriage is not a matter of convenience only. He may be of the view that marriage is merely a contract, pure and simple. These words have been used by leading lawyers. But the basis of our society is not only materialism. Our society is based on our ancient *Shastras*—the *Shastras* pertaining to agriculture, zoology and sociology. From the point of view of genesis the horse and the ass, belong to the same genus, as all of us are human beings. But human beings differ in different countries. A person likes the same sort of climate and environment in which he has been brought up. The same is the case with other living beings. Take somebody from Hissar to a new place and see the reaction. Take the case of trees for instance. Can a tree from Kashmir thrive in Rajasthan ? Many attempts were made to plant mango trees in Rajasthan but they all failed. After all there is some principle behind it. Land, seed, water and climate, every factor has something to do with it. You can't plant a tree anywhere. The same is the case with marriages. You can't marry somebody to anybody. Even for trees one has to consider which tree can be grafted upon another. I don't want to go into details. My point is that our society is based on certain political, educational, hygienic, eugenic and sexological principles. If you want any proof of this, I will quote a portion of Dr. Bhagwan Das's long speech, which he delivered while presenting his Hindu Marriage Validity Bill. In this speech he quoted many things from the *Shastras*. Dr. Bhagwan Das said:

" The hygienic and eugenic and sexological principle is that every possible care and caution should be exercised and all possible cleanliness and purity secured in respect of food and marriage and that persons with similarity of tastes and habits and purity of temperament should dine together and marry together so that the individual and racial-health and happiness may be promoted." I do not see much in eating and dining. Even before Gandhiji I did not believe in this. But if you ask me to dine with a fish-eater I would ask to be excused. I do not consider him an untouchable, but I have formed a habit. If somebody asks me to marry a certain woman.....

**Dr. Ambedkar** : There are not so many fish that could be supplied to everybody.

## [SECTION – B](#)